



COMMONWEALTH of VIRGINIA

DEPARTMENT OF LABOR AND INDUSTRY

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REVISED AGENDA

SAFETY AND HEALTH CODES BOARD

**State Corporation Commission
1300 East Main Street, Court Room A
Second Floor
Richmond, Virginia**

Thursday, January 14, 2010

10:00 a.m.

1. Call to Order
2. Approval of Agenda
3. Approval of Minutes for Public Hearing and for Board Meeting of August 13, 2009
4. Opportunity for the Public to Address the Board on this issues pending before the Board today or on any other topic that may be of concern to the Board or within the scope of authority of the Board.

This will be the only opportunity for public comment at this meeting. Please limit remarks to 5 minutes in consideration of others wishing to address the Board.

5. Old Business

- a) 16 VAC 25-50, Final Regulatory Action to Amend 16 VAC 25-50, Boiler and Pressure

Vessel Rules and Regulations;

Presenter – Ed Hilton

- b) 16 VAC 25-60, Amendment to Administrative Regulation for the Virginia Occupational Safety and Health (VOSH) Program

Presenter – Jay Withrow

6. **New Business**

- a) Federal-Identical Regulations:

- 1) Revising Standards Referenced in the Acetylene Standard for General Industry, §1910.102; Direct Final Rule

Presenter – Ron Graham

- 2) Updating OSHA Standards Based on National Consensus Standards; Personal Protective Equipment, 29 CFR Parts 1910, 1915, 1917, and 1918; Final Rule

Presenter – Glenn Cox

- b) Notice of Periodic Review of Certain Regulations

Presenter – Reba O'Connor

7. Items of Interest from the Department of Labor and Industry

8. Items of Interest from Members of the Board

9. Meeting Adjournment

DRAFT

**SAFETY AND HEALTH CODES BOARD
PUBLIC HEARING AND BOARD MEETING MINUTES
THURSDAY, AUGUST 13, 2009**

BOARD MEMBERS PRESENT: Mr. Roger Burkhart, Secretary/Presiding Officer
Mr. Louis Cernak
Dr. Diane Helentjaris, VDH representative
Mr. Daryl Hines
Ms. Eloisa Rea
Ms. Milly Rodriguez
Mr. Linwood Saunders
Mr. Danny Sutton

BOARD MEMBERS ABSENT: Mr. M. Frank Hartsoe, Vice Chair
Ms. Anna Jolly
Mr. Satish Korpe
Dr. James Mundy
Mr. Mike Murphy, DEQ representative
Mr. Chuck Stiff, Chair

STAFF PRESENT: Mr. Ray Davenport, Commissioner, Dept. of Labor and Industry

Mr. Bill Burge, Assistant Commissioner -- Programs
Mr. Jay Withrow, Director, Division of Legal Support
Mr. Ron Graham, Director, Occupational Health Compliance
Mr. John Crisanti, Manager, Office of Planning and Evaluation
Ms. Reba O'Connor, Regulatory Coordinator
Mr. Eric Delia, Policy Analyst
Ms. Regina Cobb, Agency Management Analyst Senior

OTHERS PRESENT: Ms. Beverly Crandell, Federal OSHA
Mr. Bryan Giere, NVTE, Inc.
Ms. Anne Burkhart
Ms. Regina Hines
Mr. Peter Girardi, Truetimber Tree
Mr. John D. Fulton, E. McLauchlan & Sons, Inc.
Ms. Diane Paarfus, Court Reporter, Chandler & Halasz

PUBLIC HEARING

Mr. Roger Burkhart, Secretary of the Board, called the Public Hearing to order at 10 a.m. Mr. Burkhart presided in the absence of the Chairman, Mr. Chuck Stiff, and the Vice Chairman, Mr. Frank Hartsoe. Mr. Burkhart then noted that there was a quorum. He explained that the sole purpose of the hearing is for the Board members to receive comments from the public regarding the proposed amendments to 16 VAC 25-50, Boiler and Pressure Vessel Rules and Regulations.

Since there were no comments made, Mr. Burkhart adjourned the hearing at 10:01 a.m.

BOARD MEETING

ORDERING OF AGENDA

Immediately following the Public Hearing, Secretary Roger Burkhart called the Board meeting to order at 10:02 a.m. Mr. Burkhart asked for a motion from the Board to approve the Agenda. On proper motion by Ms. Rodriguez and second by Mr. Saunders, the Agenda was approved, as submitted. The motion was carried by unanimous voice vote.

APPROVAL OF MINUTES

Mr. Burkhart asked the Board for a motion to approve the Minutes of the April 16, 2009, Public Hearing and Board Meeting. On proper motions by Mr. Cernak and Mr. Saunders, respectively, and seconds by Mr. Sutton and Ms. Rea, respectively, both Minutes were approved, as submitted, by unanimous voice vote.

ELECTION OF OFFICERS

Mr. Burkhart explained that the normal flow of the election is for the Vice Chair to become the Chair and for the Secretary to become the Vice Chair. He then proposed that the Vice Chair, Mr. Frank Hartsoe, become Board Chair and requested nominations for Chair. Mr. Frank Hartsoe was nominated for Board Chair. There were no other nominations. On proper motion by Ms. Rodriguez and second by Mr. Cernak, Mr. Frank Hartsoe was unanimously elected as Chair. Next, Mr. Burkhart opened the floor for nominations for Vice Chair. Mr. Burkhart was nominated. There were no other nominations. On proper motion by Mr. Saunders and second by Mr. Hines and Ms. Rodriguez, Mr. Burkhart was elected Vice Chair by unanimous voice vote.

PUBLIC COMMENTS

Mr. Burkhart opened the floor to comments from the public, however, there were no comments.

OLD BUSINESS

16 VAC 25-60, Final Regulation to Amend the Administrative Regulation for the Virginia Occupational Safety and Health (VOSH) Program, 16 VAC 25-60-240 and 16 VAC 25-60-245, Take and Preserve Testimony, Examine Witnesses and Administer Oaths

Mr. Jay Withrow, Director of the Office of Legal Support for the Department of Labor and Industry, requested the Board to consider for adoption as a final regulation of the Board various amendments to the Administrative Regulation for the VOSH Program, including the amendment to 16 VAC 25-60-240, and the addition of a new section, 16 VAC 25-60-245, to establish procedures for the Commissioner or his appointed representatives under Va. Code §40.1-6(5) to take and preserve testimony, examine witnesses and administer oaths under Va. Code §§40.1-6(4) and 40.1-10, pursuant to Va. Code §40.1-22(5).

Mr. Withrow then summarized the rulemaking process for this regulatory amendment. In summarizing the final regulation, he called the Board's attention to page 3 of the briefing package where he explained that a number of the changes were housekeeping changes primarily in response to a request from the Registrar of Regulations to correct sections which did not comply with Virginia Administrative Code (VAC) formatting requirements. Such changes included: placing definitions in alphabetical order and renumbering and cross-referencing sections using proper VAC format.

Additionally, on page 3 of the briefing package, Mr. Withrow called the Board's attention to a substantive change -- an amendment to Section 90, Release of information and disclosure pursuant to requests under the Virginia Freedom of Information Act and subpoenas. Mr. Withrow explained that in this amendment the phrase, "for any purpose, except to the individual giving the statement", was removed. He continued by explaining that some attorneys for employers have identified employees who were interviewed during a VOSH inspection and requested the employee to request copies of their confidential interview statements so the employer could then review the statements. He further explained that this recommended change is to clarify the original regulatory intent because current practice could compromise an employee's willingness in future accident investigations to provide a statement to VOSH, or to be completely forthcoming with regards to safe working conditions on the job site if they know their employer can gain access to the interview statement.

He noted that, with respect to the basis, purpose and impact of the regulation, the final rulemaking has made no additional changes from the proposed stage.

Mr. Withrow concluded by recommending that the Board consider for adoption as a final regulation of the Board multiple amendments to 16 VAC 25-60, the Administrative Regulation for the Virginia Occupational Safety and Health (VOSH) Program, which include the revision of 16 VAC 25-240 and the addition of 16 VAC 25-60-245, to establish procedures for the Commissioner or his appointed representatives under 40.1-6(5) to take and preserve testimony, examine witnesses and administer oaths under Va. Code §§40.1-6(4) and 40.1-10.

The motion to adopt this final amendment was properly made by Mr. Sutton, seconded by Dr. Helentjaris and unanimously carried by voice vote.

16 VAC 25-73, Final Regulation on Tree Trimming Operations

Mr. Withrow requested, on behalf of the VOSH Program, that the Safety and Health Codes Board consider for adoption a final regulation applicable to Tree Trimming Operations, pursuant to Va. Code §40.1-22(5).

Mr. Withrow summarized the rulemaking process for this final regulation. He noted that there had been no changes to the summary of the final regulation since the proposed stage. He next reviewed the major

changes to the original proposed regulation. He reminded the Board that this regulation was based on an ANSI standard for Tree Trimming and that the Department made changes to this ANSI standards and that some of the changes were a result of public comments. Mr. Withrow called the Board's attention to item 3 on page 5 of the briefing package which involves a major change which recommends revising the first aid requirement to exempt an employer from compliance with 16 VAC25-95.E.1 if it can document in writing that it initiated first aid/CPR training for all new crew personnel within two months (60 days) of hire, or whenever a previously employed person has accumulated forty-five (45) work days for the same employer during the previous year.

He called the Board's attention to revisions on the bottom of page 5 of the briefing package to the Electrical Standard and to revisions on page 6 of the briefing package to the vehicle and mobile equipment section regarding maintenance of skid resistant surfaces. The last major change that Mr. Withrow mentioned was a revision to the work procedures section which requires that qualified arborist assure that each component of the climbing system is approved by the manufacturer for its intended use as well as its compatibility with other components of the climbing system.

He noted that there had been no change from the proposed regulation with respect to the basis, purpose and impact of the regulation, comments, and meeting with interested parties.

He referred the Board to page 20 of the briefing package where the Summary of Comments began. Since he had discussed the comments in detail at previous meetings, he decided not to do so at this meeting, unless the Board wanted him to do so or if there was a specific issue that the Board wanted him to address. He mentioned using a crane to lift a worker into the trees safely. With regards to cranes, he stated that the Department added a requirement for compliance with manufacturers' specifications and limitations.

On behalf of the Department of Labor and Industry, Mr. Withrow concluded by recommending that the Board consider for adoption as a final regulation, 16 VAC 25-73, Tree Trimming Operations.

Mr. Withrow explained that he had forgotten to add information with regard to a table in the electrical line clearing/tree trimming regulation which dealt with approach distance. He stated that the Department had deleted the table but found references in the briefing package to the deleted table that had been inadvertently included on pages 69, 71, 84, 88-89 and 93 and, therefore, need to be deleted. The motion to accept Mr. Withrow's recommendation with additional amendments was properly made by Mr. Saunders and seconded by Mr. Cernak and unanimously carried by voice vote.

NEW BUSINESS

Various Corrections and Technical Amendments for Part 1910 – General Industry and Part 1915 – Shipyard Employment

Mr. John Crisanti, Manager of the Office of Planning and Evaluation for the Department of Labor and Industry, requested the Board to consider for adoption federal OSHA's revised final rule for Corrections and Technical Amendments to Parts 1910 and 1915 (for those provisions which, among other things, removed "§1910.20" and added "§1910.1020" in items 1, 24 and 36), as published in 71 FR 16669 on April 3, 2006. Except for the above, all other corrections and technical amendments in this 2006 revision were adopted by the Board on June 19, 2006, and became effective on September 1, 2006. The proposed effective date is November 15, 2009.

Mr. Crisanti summarized this amendment by stating that federal OSHA amended various safety and health standards as part of its ongoing regulatory review which included making necessary corrections, housekeeping changes or technical amendments. He added that these revisions do not affect the substantive requirements or coverage of the standards involved, modify or revoke existing rights and obligations, or establish new rights and obligations.

He explained that, during its June 19, 2006, meeting, the Board adopted most of the corrections and technical amendments to Parts 1910 – General Industry, 1915 – Shipyard Employment and 1926- Construction Industry, as published in 71 FR 16669 on April 3, 2006, but it did not adopt any amendments that substituted “§1910.1020” for “§1910.20” when referencing the regulation for Access to Employee Exposure and Medical Records [items 1, 34 and 36] because the Virginia unique regulation [16 VAC 25-80 (§1910.20)], not the current federal regulation, §1910.1020, was in effect in Virginia at that time. He added that in §1913, “Rules of Agency Practice and Procedure Concerning OSHA Access to Employee Medical Records” under item 34, paragraph (n) was removed because it specified an effective date that expired over 20 years ago.

Mr. Crisanti explained that adopting these housekeeping and technical amendments have no impact on employers, employees or the Department. He concluded by recommending that the Board adopt these corrections and technical amendments, as authorized by Virginia Code §§40.1-22(5) and 2.2-4006.A.4(c), with an effective date of November 15, 2009.

Mr. Cernak moved to accept Mr. Crisanti’s recommendation. Dr. Helentjaris properly seconded the motion which was unanimously approved by voice vote.

Items of Interest from Members from the Department of Labor and Industry

There were no items of interest from the Department.

Items of Interest from Members from the Board

There were no items of interest from the Board.

Adjournment

There being no further business, Mr. Burkhart requested a motion for adjournment. Mr. Sutton made the motion to adjourn the meeting. Ms. Rodriguez seconded the motion which was carried unanimously by voice vote. The meeting adjourned at 10:38 a.m.



VIRGINIA SAFETY AND HEALTH CODES BOARD

BRIEFING PACKAGE FOR

JANUARY 14, 2010

**Final Regulatory Action to Amend
16 VAC 25-50, Boiler and Pressure Vessel Rules and Regulations**

I. Action Requested.

The Boiler Safety Compliance Program of the Virginia Department of Labor and Industry requests that the Safety and Health Codes Board consider for adoption as a final regulation of the Board, amendments to 16 VAC 25-50, Boiler and Pressure Vessel Rules and Regulations.

II. Summary of the Final Amendments.

The Boiler Safety Compliance Program seeks to amend the Boiler and Pressure Vessel Rules and Regulations. The final regulation addresses the following suggested amendments:

1. In Paragraph A of 16 VAC 25-50-150, add a fee of \$10.00 for the reprinting of a certificate to cover direct administrative costs, i.e., printing, mailing and employee's work-related time.
2. In Paragraph D of 16 VAC 25-50-150, Inspection Certificate and Inspection Fees, revise fees from "\$800" to "\$1000" to reflect cost of living adjustment;
3. In 16 VAC 25-50-360, Paragraph C.5.a., the Factors of safety are modified for vessels and a dual standard is established. Prior to January 1, 1999, the Factor of Safety remains 4.5. Vessels built on or after this date would have a lower factor of safety of 4.0. This revision is necessary to conform to current International Boiler and Pressure Vessel Code.
4. In 16 VAC 25-50-380, paragraph B.3., Factors of safety are modified for vessels and a

dual standard is established. Prior to January 1, 1999, the Factor of Safety remains 4.0. Vessels built on or after this date have a lower factor of safety of 3.5. This revision is necessary to conform to current International Boiler and Pressure Vessel Code.

5. In Paragraph A of 16 VAC 25-50-430, change "1.5" to "1.25" for the maximum allowable working pressure for a hydrostatic pressure test, when applied to boilers or pressure vessels. The revision is necessary to conform to current International Boiler and Pressure Vessel Code;
6. Delete last two sentences of Paragraph D of 16 VAC 25-50-480, which read as follows: "A seal weld is a tube-to-tubesheet weld used to supplement an expanded tube joint to ensure leak tightness. Seal welds on carbon steel (P-1) tube joints made by qualified welders will not require an inspection nor a Form R-1."
7. Delete the term "welded" from Form R-1, Report of Repairs to conform to current forms;
8. Incorporation by reference of the most recent edition (~~2006~~ 2007) of B31.1, ASME Code for Pressure Power Piping, American National Standards Institute;
9. Incorporation by reference of the most recent edition (2006) of API510 as listed in the National Board Inspection Code;
10. Incorporation by reference of the most recent edition (~~2006~~ 2009) of CSD-1, Controls and Safety Devices for Automatically fired Fired Boilers; ~~and related section on maintenance that includes revised inspector's checklist;~~
11. Incorporation by reference of the most recent edition (2007) of the National Board Inspection Code (NBIC); and
12. Incorporation by reference of the most recent edition (2007) of the International Boiler and Pressure Vessel Code, including sections XII and VIII, Div 2.

III. Basis and Purpose of Intended Regulatory Action.

A. Basis.

The Safety and Health Codes Board is authorized by Title 40.1-51.6.A. of the *Code of Virginia* to:

“...formulate definitions, rules, regulations and standards which shall be designed for the protection of human life and property from the unsafe or dangerous construction, installation, inspection, operation, maintenance and repair of boilers and pressure vessels in this Commonwealth.”

B. Purpose.

The purpose of the final regulatory action is to conform to the most current editions of ASME and National Board safety and inspection codes, as noted in Section II of this

briefing package, as well as in-house administrative fee adjustments to cover increased costs of doing business.

IV. Summary of Rulemaking Process.

A Notice of Intended Regulatory Action (NOIRA) was adopted by the Board on February 28, 2008. The NOIRA was published on June 9, 2008, with a 30-day comment period ending on July 9, 2008. Comments were received from three commenters. These comments are detailed later in this briefing package.

The Board adopted proposed regulatory language on November 20, 2008. The proposed regulation was published on July 20, 2009, with a 60-day comment period ending on September 18, 2009. There were two comments received which are detailed later in this briefing package.

A public hearing was held by the Board on August 13, 2009, but no one had comments.

V. Impact on Employers, Employees and the Department.

A. Impact on Employers.

The non-fee related changes are necessary to update the regulations to the current editions of ASME and National Board safety and inspection codes which are incorporated by reference.

The increase in fees will affect a number of the approximately 50 "R" Stamp holders in the Commonwealth that have their reviews performed by the Department. The Commonwealth of Virginia performs all "R" stamp reviews of shops that possess only an "R" stamp. Shops that possess an ASME Code stamp are audited by ASME. If the shop also has an "R" Stamp, ASME performs that review in conjunction with the Code Stamp review. During calendar years 2006 and 2007, the Department performed 15 and 14 such inspections, respectively. For 2008, the Department performed 13 inspections and in 2009, 16 inspections have been performed.

The increased cost to these employers who request a review is \$200 once in a three-year period (reviews are performed every three years). This will increase the total cost for the review to \$1,000. The last time the review fee was increased to address the additional costs of doing business was in the 1999 Edition of the Boiler Rules and Regulations. The only other alternative employers would have for review would be to have the review performed by the National Board which charges \$3,000 for the review.

B. Impact on Employees.

The final regulation will provide both increased protection of human life (both employee safety and public safety) as well as property from the unsafe or dangerous construction, installation, inspection, operation, and repair of boilers and pressure vessels in the Commonwealth of Virginia.

C. Impact on the Department of Labor and Industry.

The Department anticipates no additional fiscal impact beyond the cost to promulgate the revisions to the regulation. All revenue from boiler fees is deposited directly into the state general fund. None of the funding stays with the Department.

VI. Technological Feasibility.

These technical changes are already in effect in other jurisdiction of the United States and Canada; therefore, the final amendments are technologically feasible for implementation by both the Department and the regulated community.

VII. Summary of Comments: NOIRA Thirty-Day Comment Period and Sixty-Day Comment Period.

The Board adopted proposed regulatory language on November 20, 2008. The proposed regulation was published on July 20, 2009, with a 60-day comment period ending on September 18, 2009. A public hearing was held by the Board on August 13, 2009, but no comments were received at that time. A summary of the written comments received by the Boiler Safety Compliance Program of the Virginia Department of Labor and Industry during the comment periods are as follows:

Commenter 1: Mr. Mark Anderson, American Boiler Inspection Services, Inc., June 30, 2008

Comment 1: Mr. Anderson stated that he would support the DOLI proposed changes, with the exception of the change to charge \$10 for a replacement Certificate. He felt that \$10 would not “come close to covering the DOLI time to process the request and then to bill and process the payment of \$10.” Instead, Mr. Anderson suggested a charge of \$20.

Agency Response:

The fees the Department charges are based upon state law which requires that we recoup no more than our actual costs. While the original certificate fee is \$20, these costs reflect the time required to process the inspection report and generate and mail the invoice. While the Department presently does not charge for a duplicate Certificate of Inspection, we feel that a \$10 fee more closely represents the cost to the Department of generating a duplicate certificate.

Comment 2: “Increase the DOLI inspection fees listed in 16 VAC 25-50-250, paragraph C, section a) from \$135 to \$150; b) from \$70 to \$100, and section c) from \$50 to \$100.” He stated that “these rates more accurately reflect the true cost of the inspections and of the cost of living adjustment.”

Agency Response:

The inspection fees of the Department reflect what are determined to be our actual costs. The Department does not perform a large number of inspections annually,

and generally only when requested by the owner. While it is not possible to break out the total actual direct and indirect costs of an inspection performed within a day of enforcement activity, the inspection fees requested approximates what the Department estimates is the real cost.

Comment 3: “Allow DOLI to authorize Insurance and Contract Fee Inspectors to perform compliance inspections of objects when the certificates of inspection have lapsed for a minimum period specified by DOLI. Cost of the inspection to the Owner/User would not exceed the DOLI inspection fees listed in 16 VAC 25-50-250, paragraph C. The lists of these objects with lapsed certificates to be inspected would be provided to the inspection companies by DOLI.”

Comment 4: “Allow DOLI to authorize “Special Inspectors” to visit locations with unregistered boilers or pressure vessels to perform the first inspection and register the units with DOLI. The cost of the inspection to the Owner/User would be a maximum of the DOLI specified fee in 16 VAC 25-50-250, paragraph C to be paid to the “Authorized Inspection Agency”, or possibly for free.”

Agency Response to Comments 3 and 4:

The Department does not believe that a regulatory amendment is necessary, as the Commissioner of the Department of Labor and Industry already has the authority to appoint state inspectors. Although DOLI has no interest at this time in pursuing this possibility, it is one option that the Department may use in the future.

Comment 5: Set the minimum insurance limits for all Contract Fee Inspectors to be the same limit amounts, regardless of business size.

Agency Response:

The specific insurance requirements for the Contract Fee Inspection Companies are set out in the *Code of Virginia* and are not addressed in regulations promulgated by the Board. Any such statutory change would require an act of the General Assembly.

Comment 6: “Allow Inspection companies to be invoiced by DOLI for the inspections performed by that Inspection Company, allow the Inspection Company to collect DOLI Certificate fees and forward to DOLI as specified in 16 VAC 25-50-150, paragraph A, section 2. Speeding DOLI’s processing time and reducing DOLI’s invoicing and collection efforts.”

Agency Response:

Your suggestion that the Department invoice owners for inspections performed by Contract Fee Inspection Companies or conversely, have the Contract Fee Inspection Companies collect the certificate fees for the Department is not technically or economically feasible at this time. As you are aware, the

Department uses software written by a third party to track inspections, prepare invoices, and print certificates. There are certain protocols as to how this information is input into the software over which the Department has no control. Enhancements to this software, if agreeable to the vendor, would be costly and be of little benefit to the Department. Regardless, given the current budgetary situation, the Department sees little possibility of additional funding for this purpose in the foreseeable future.

Commenter 2: Mr. Kurt D. Crist, Tidewater Immediate Inspections, Inc., July 7, 2008

Comment 1: Mr. Crist asked the Department to increase the inspection fees to conform with today's rates:

UPV \$80.00

External Boiler Inspection \$100.00 (this includes water heaters)

Internal Boiler Inspections \$150.00

Mr. Crist added that an increase in inspection fees "...would be in line with the insurance regulations in place and gasoline prices today since this business requires a lot of vehicular travel that is not currently compensated for."

Agency Response:

"The inspection fees of the Department reflect what are determined to be our actual costs. The Department does not perform a large number of inspections annually, and generally only when requested by the owner. While it is not possible to break out the total actual direct and indirect costs of an inspection performed within a day of enforcement activity, the inspection fees requested approximates what the Department estimates is the real cost."

Comment 2: Mr. Crist suggested that the Department "...make the insurance required by contract fee inspectors realistic, not by how many objects...." He expressed concerns about only his inspecting 100 boilers in schools or other "high profile places" and the possibility of an accident. He questioned how the Department would explain to the parents of the school children that he [Mr. Crist] was only required to carry a low amount of insurance because he didn't inspect the required amount of objects to increase the value of their child.

Agency Response:

The specific insurance requirements for the Contract Fee Inspection Companies are set out in a separate regulation, 16 VAC 25-55-20, Financial Requirements, and, therefore, cannot be addressed in the Boiler and Pressure Vessel Rules and Regulation amendments under consideration in this action. It should be noted, however, that Mr. Crist has no regulatory maximum on the amount of insurance coverage he may carry. There is only a regulatory minimum dollar floor level requirement.

Comment 3: Mr. Crist requested that “inspection companies be allowed to visit locations with unregistered objects without [inspection companies] being penalized for reporting them to DOLI.” He complained that once his company turns them in, they call a different company to perform their inspection service.

Agency Response:

“While the Department may send an inspector to a location based on information provided by your company, the DOLI inspector does not inform the owner at that location of the source of this information. However, it is reasonable to believe that most companies might possibly make an informed guess as to why the Department visited shortly after your company was there. The Department takes issue with Mr. Crist’s use of the term “penalized” as this scenario does not actually decrease his customer base and would impact all of his competitors as well.”

Commenter 3: Mr. Jim Mannion, Valley Boiler Inspection, July 8, 2008

Mr. Mannion stated that he is in agreement with most of the Department’s proposed changes with the following additions:

Comment 1: “If the fee charged for National Board reviews is to be raised due to cost of living, the fees charged for inspection of objects should also be raised for the same reason. With today’s costs I would recommend fees of \$200.00 for power boilers, \$125.00 for heating boilers, and \$100.00 for pressure vessels.”

Agency Response:

“The inspection fees of the Department reflect what are determined to be our actual costs. The Department does not perform a large number of inspections annually, and generally only when requested by the owner. While it is not possible to break out the total actual direct and indirect costs of an inspection performed within a day of enforcement activity, the inspection fees requested approximates what the Department estimates is the real cost.”

Comment 2: The Department’s certificate inspection fees should once again be collected by inspection companies, similar to the past decal program. This fee could be collected at the time of inspection and forwarded to DOLI with inspection reports. This program would eliminate a large amount of clerical work for DOLI, including complaints from owners wondering why they have received a second invoice. It would be a simpler, more economical program for DOLI, owners, users, and inspection companies.

Agency Response:

“Your suggestion that the Contract Fee Inspection Companies collect the certificate fees for the Department is not technically or economically feasible at this time. As you are aware, the Department uses software written and maintained by a third party to track inspections, prepare invoices, and print

certificates. There are certain protocols as to how this information is input into the software over which we have no control. Such enhancements to this software, if indeed agreeable to the vendor, would be costly and seen by the Department as being of little benefit to the Department. Regardless, given the current state budgetary situation, the Department sees little possibility of additional funding for this purpose in the foreseeable future.”

Comment 3: “Another improvement to the program would be for the Department to authorize inspection companies to inspect overdue and unregistered objects and collect fees set by DOLI. As you know, there is large percentage of objects that are not being inspected. When I contact these owners regarding inspecting their equipment the most common response I get is that they will have it inspected when somebody with authority forces them to. As a former Boiler Safety Division employee I am well aware that 2 Deputy Inspectors will never be able to clear up all of the overdue objects or find all of the many unregistered objects in the Commonwealth. Authorizing inspection companies to perform this work would definitely reduce the number of overdue objects and unregistered objects and also DOLI’s work load.”

Agency Response:

“Your recommendation that Insurance Company and Contract Fee Inspection Company inspectors be authorized by the Department to perform inspection of overdue objects and find unregistered objects is interesting and may have merit. The Department does not believe that it requires a change in the rules, as the Commissioner of the Department already has the authority to appoint state inspectors. While there is no interest at this time in pursuing this possibility, it is one option that the Department may consider for use in the future.”

Commenter 4: Mr. Fred Barton, July 27, 2009

“The proposed Boiler Rules revisions are now under public comment. I would like to suggest two (2) editorial changes to clarify the proposed change to paragraph D of 16 VAC25-50-480. Repairs and alterations.

The proposed change to Paragraph D is to delete the last sentence relative to tube to tubesheet seal welds.

The reference to defining seal welds in the first sentence of Paragraph D should also be deleted since this is the only paragraph (subsection) where seal welds are defined or even mentioned.

The same first sentence also refers to a “Welded” Repair form. The title for that form is also being revised later on this same page to just say Repair form so that non-welded repairs to graphite and plastic vessels can be documented on the same form.

The first sentence of Paragraph D with suggested editorial changes would then read “All repairs and alterations shall be be [sic] reported on the applicable Report

of Repair or Alteration form.” See attached file.”

Agency Response:

“Your comments denoting the first sentence in subsection 16 VAC25-50-480 in regards to the reference of a seal weld no longer being appropriate is well taken, since we propose deleting the sentence defining seal welds. Likewise, the reference to the repair form by it’s old name “Report of Welded Repair” is no longer valid as the National Board has deleted the term “welded” from the report. These suggested changes to the Boiler & Pressure Vessel Rules and Regulations will be incorporated into the final regulations when they are approved.”

Commenter 5: Mr. Kenneth A. Stoller, Senior Counsel, American Insurance Association, September 18, 2009

Comment 1: Items 3, 4, 5, 12: We recommend changing the references to the “International Boiler and Pressure Vessel Code” to read “ASME Boiler and Pressure Vessel Code.”

Agency Response:

“As we are restricted by the rule making process to only making modifications to the changes originally proposed, only your comments that pertain to those proposals will be acted upon. I will address your other comments with the understanding that they will not be presented to the Safety & Health Codes Board at this time, though they may be addressed in future revisions.

You recommend changing the reference in Items 3, 4, 5, & 12 from the “International Boiler and Pressure Vessel Code” to “ASME Boiler and Pressure Vessel Code”. ASME itself refers to its boiler and pressure vessel code as the “International Boiler and Pressure Vessel Code”, (see their website at ASME.org). I do not propose changing this reference.”

Comment 2: Item 8: We recommend changing the reference to “B31.1, ASME Code for Pressure Piping” to read “B31.1, ASME Code for Power Piping.”

Agency Response:

“You recommend changing the reference in Item 8 from “B31.1 ASME Code for Pressure Piping” to read “B31.1 ASME Code for Power Piping”. As a subsection of B31 ASME Code for Pressure Piping, either term would be appropriate. However, it was a good catch on your part for an item that has been in our rules since it first appeared. I agree with you that it should read “B31.1 ASME Code for Power Piping”.

Comment 3: Item 10: We recommend changing the date of the most recent edition of CSD-1 from 2006 to 2009.

Agency Response:

“Your final comment on Item 10 on changing the date of the most recent edition of CSD-1 from 2006 to 2009 has already been done.”

Comment 4: “16 VAC25-50-150.A.2: We believe the \$4.00 maximum fee that special inspectors may charge owners or users for collecting and forwarding inspection certificate fees is unreasonably low. We recommend either eliminating the maximum or increasing it to \$20.00.”

Agency Response:

“Regarding your comment on 16VAC25-50-150.A.2, I am not sure or if you fully comprehend the intent of this section. This paragraph refers to a process which is not currently being used, wherein the Special Inspector could update the Certificate of Inspection with a sticker and collect the certificate fee (\$20.00) at the time of inspection and forward it to the state. This eliminated the invoicing and mailing of the certificate, providing a savings for the state. For this service, the inspection agency was allowed to keep \$4.00 of the \$20.00 fee.”

Comment 5: “16VAC52-360.A.1/A.3: We believe the hydrostatic pressure test contemplated by these subsections is excessive and could cause serious damage to boilers. Accordingly, we recommend limiting testing 1-1/4 times maximum allowable working pressure.”

Agency Response:

“The following comments were made on Section 16VAC25-50-360, which was erroneously referred to as 16 VAC25-~~52~~-360 in your letter.

16VAV[sic] 25-360A.1/A.3 this section of the Rules and Regulations deals with existing installations regardless of age or construction. It was intended to apply to non-code boilers as well as code constructed boilers. Part of the intent of the hydrostatic pressure test at 1-1/2 times maximum allowable working pressure was to weed out those boilers that were of questionable construction.”

Comment 6: “16 VAC25-52-360.E: While Section 360 concerns power and high-pressure, high-temperature water boilers, Subsection E addresses pressure on cast iron boilers, which under the ASME code may not be power boilers or high-pressure, high-temperature. Accordingly, we recommend moving the subsection to a more appropriate location in the regulations.”

Agency Response:

“16VAC25-50-360.E this subsection referring to cast iron boilers is due to the fact it is in the “Existing Installations” section. At the time the rules and regulations went into effect, an effort was made to address older boilers and bring them into conformance with the modern codes. High pressure cast iron boilers have existed in the past and this subsection was intended to restrict them to low pressure service.”

Comment 7: “16VAC25-50-360.F.4: We recommend deleting the phrase “except as provided by applicable sections of the ASME Code,” since the applicable section (PG-71.3) prohibits

valves of any kind in the inlet or outlet piping of the safety valve.”

Agency Response:

“16VAC25-50-360.F.4 while the ASME code for power boilers does not permit the installation of valves between the boiler and the safety valve, under the Virginia “Rules and Regulations for Boilers & Pressure Vessels” certain ASME Section VIII Div.1 vessels meet the definition of a boiler. Since Section VIII **does** allow for stop valves to be placed between the vessel and the safety valve, (UG-135 (d), also Appendix M), it is important that the reference “except as provided by applicable sections of the ASME Code” remain in the rules and regulations.”

Comment 8: “16 VAC25-50-480.D Deleting the second-to-last sentence would eliminate the definition of “sea weld.” We question whether that is the intent of the amendment, since the first sentence continues to refer to that definition.”

Agency Response:

“Your comment on 16VAC25-50-480.D referencing the seal weld is well taken. It has already been pointed out that there are two sentences that refer to the seal weld in this subsection and it is our intention that both references be deleted. This will bring the rules and regulations in line with the National Board requirements for R-Stamp holders being the only authorized companies allowed to make welded repairs to boilers and pressure vessels.”

Comment 9: “Documents Incorporated by Reference: We question whether the National Board Bylaws should be included here, since they do not govern boiler and pressure vessel inspection, repair, or alteration.”

Agency Response:

“For your final comment on the Documents Incorporated by Reference, I believe that the National Board Bylaws are included only for their reference as to how the Chief Boiler Inspector and National Board member is elected.”

Contact Person:

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RECOMMENDED ACTION

The Boiler Safety Compliance Program recommends that the Safety and Health Codes Board adopt the attached draft final language for the amendment to 16 VAC 25-50, Boiler and Pressure Rules and Regulation as a final regulation of the Board, as authorized by §40.1-51.6.

The Department also recommends that the Board state in any motion it may make to amend this regulation that it will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision of this or any other regulation which has been adopted in accordance with the Administrative Process Act.

**16 VAC 25-50, Final Regulation to Amend the Boiler and Pressure Vessel
Rules and Regulations**

As Adopted by the
Safety and Health Codes Board

Date: _____



16VAC25-50-150. Inspection certificate and inspection fees.

A. Upon the inspection and determination that a boiler or pressure vessel is suitable and conforms to this chapter, the owner or user shall remit the payment for an inspection certificate in one of the following forms and amounts for each item required to be inspected under the Act.

1. Payment of \$20 may be sent from the owner or user to the chief inspector by check, credit card or money order. Payment of inspection certificate fees should be made payable to the Treasurer of Virginia; or

2. Payment may be presented to a special inspector, where the inspector is authorized to collect and forward such fees on the department's behalf. The commissioner may authorize special inspectors to collect and forward to the chief inspector \$16 for each inspection certificate. Pursuant to §40.1-51.10:1 of the Code of Virginia, special inspectors may charge owners or users a fee not exceeding \$4.00 for collecting and forwarding inspection certificate fees.

An inspection certificate will not be issued to the owner or user until payment is received by either the department or, if previously authorized, by a special inspector. A fee of \$10.00 will be charged for each reprint of an inspection certificate.

B. The chief inspector may extend an inspection certificate for up to three additional months beyond a two month grace period following the expiration of a certificate. Such extension is subject to a satisfactory external inspection of the boiler or pressure vessel and receipt of a fee of \$20 for each month of extension.

C. When the chief inspector determines that no contract fee inspectors are available to inspect a regulated uninsured boiler or pressure vessel in a timely manner, a commonwealth inspector may be directed to conduct a certification inspection. Contract fee inspection service shall be determined

unavailable where (i) at least two contract fee inspectors contacted will not agree to provide inspection services to the owner or user within at least 21 days from the request and (ii) the owner's or user's inspection certificate will expire within that same period.

The following rates per inspected object, in addition to inspection certificate fees, shall apply for certification inspections conducted by a commonwealth inspector:

1. Power boilers and high pressure, high temperature water boilers	\$135
2. Heating boilers	\$70
3. Pressure vessels	\$50

D. The review of a manufacturer's or repair organization's facility for the purpose of national accreditation will be performed by the chief inspector or his qualified designee for an additional fee of ~~\$800~~ \$1000 per review or survey.

E. The owner or user who causes a boiler or pressure vessel to be operated without a valid certificate shall be subject to the penalty as provided for in §40.1-51.12 of the Act.

F. Inspection certificates are not required for unfired pressure vessels inspected by an authorized owner-user inspection agency. However, the agency shall keep on file in its office in the establishment where the equipment is located a true record or copy of the report of the latest of each inspection signed by the inspector who made the inspection.

Part III
Existing Installations

16VAC25-50-360. Power and high-pressure, high-temperature water boilers.

A. Age limit of existing boilers.

1. The age limit of any boiler of nonstandard construction, installed before July 1, 1974, other than one having a riveted, longitudinal lap joint, shall be 30 years; however, any boiler passing a thorough internal and external inspection, and not displaying any leakage or distress under a hydrostatic pressure test of 1-1/2 times the allowable working pressure held for at least 30 minutes, may be continued in operation without reduction in working pressure. The age limit of any boiler having riveted, longitudinal, lap joints and operating at a pressure in excess of 50 psig shall be 20 years. This type of boiler, when removed from an existing setting, shall not be reinstalled for a pressure in excess of 15 psig. A reasonable time for replacement, not to exceed one year, may be given at the discretion of the chief inspector.
2. The shell or drum of a boiler in which a typical lap seam crack is discovered along a longitudinal riveted joint for either butt or lap joints shall be permanently removed from service.
3. The age limit of boilers of standard construction, installed before July 1, 1974, shall be determined from the results of a thorough internal and external inspection by an authorized inspector and the application of an appropriate pressure test. Hydrostatic test pressure shall be 1-1/2 times the allowable working pressure provided there is no evidence of leakage or distress under these test conditions.

4. The minimum temperature of the water used for the hydrostatic test of low-pressure boilers and pressure vessels shall be 60°F. The minimum temperature of the water used for the hydrostatic test of power boilers shall be 70°F or ambient whichever is greater.

B. The maximum allowable working pressure for standard boilers shall be determined in accordance with the applicable provisions of the edition of the ASME Code under which they were constructed and stamped.

C. 1. The maximum allowable working pressure on the shell of a nonstandard boiler shall be determined by the strength of the weakest section of the structure, computed from the thickness of the plate, the tensile strength of the plate, the efficiency of the longitudinal joint or tube ligaments, the inside diameter of the weakest course and the factor of safety allowed by this chapter.

$$\frac{TStE}{RFS} = \text{Maximum allowable working pressure, psi}$$

where:

TS = ultimate tensile strength of shell plates, psi

t = minimum thickness of shell plate, in weakest course, inches

E = efficiency of longitudinal joint:

For tube ligaments, E shall be determined by the rules in Section I of the ASME Code for Power Boilers. For riveted joints, E shall be determined by the rules in the applicable edition of the ASME Code. For seamless construction, E shall be considered 100%.

R = inside radius of the weakest course of the shell, in inches

FS = factor of safety permitted.

2. Tensile strength. When the tensile strength of steel or wrought iron shell plates is not known, it shall be taken as 55,000 psi.

3. Crushing strength of mild steel. The resistance to crushing of mild steel shall be taken at 95,000 psi of cross-sectional area.

4. Strength of rivets in shear. When computing the ultimate strength of rivets in shear, the following values, in pounds per square inch, of the cross-sectional area of the rivet shank shall be used.

	PSI
Iron rivets in single shear	38,000
iron rivets in double shear	76,000
Steel rivets in single shear	44,000
Steel rivets in double shear	88,000

When the diameter of the rivet holes in the longitudinal joints of a boiler is not known, the diameter and cross-sectional area of rivets, after driving, may be selected from Table 1, or as ascertained by cutting out one rivet in the body of the joint.

TABLE 1
SIZES OF RIVETS BASED ON PLATE THICKNESS
(in inches)

Plate of Thickness	Rivet Diameter after Driving
$\frac{1}{4}$	$\frac{11}{16}$
$\frac{9}{32}$	$\frac{11}{16}$
$\frac{5}{16}$	$\frac{3}{4}$
$\frac{11}{32}$	$\frac{3}{4}$
$\frac{3}{8}$	$\frac{13}{16}$
$\frac{13}{32}$	$\frac{13}{16}$
$\frac{7}{16}$	$\frac{15}{16}$
$\frac{15}{32}$	$\frac{15}{16}$
$\frac{1}{2}$	$\frac{15}{16}$
$\frac{9}{16}$	$1-\frac{1}{16}$
$\frac{5}{8}$	$1-\frac{1}{16}$

5. Factors of safety. The following factors of safety shall be increased by the inspector if the condition and safety of the boiler demand it:

a. The lowest factor of safety permissible on existing installations shall be 4.5 for vessels built prior to January 1, 1999. For vessels built on or after January 1, 1999, the factor of safety may be 4.0.

Horizontal-return-tubular boilers having continuous longitudinal lap seams more than 12 feet in length, shall have a factor of safety of eight. When this type of boiler is removed from its existing setting, it shall not be reinstalled for pressures in excess of 15 psig.

b. Reinstalled or secondhand boilers shall have a minimum factor of safety of six when the longitudinal seams are of lap-riveted construction, and a minimum factor of safety of five when the longitudinal seams are of butt-strap and double-strap construction.

D. Cast-iron headers and mud drums. The maximum allowable working pressure on a water tube boiler, the tubes of which are secured to cast iron or malleable-iron headers, or which have cast iron mud drums, shall not exceed 160 psig.

E. Pressure on cast iron boilers. The maximum allowable working pressure for any cast iron boiler, except hot water boilers, shall be 15 psig.

F. Safety valves.

1. The use of weighted-lever safety valves, or safety valves having either the seat or disk of cast iron, shall be prohibited. Valves of this type shall be replaced by direct, spring-loaded, pop-type valves that conform to the requirements of the ASME Code, Section I.

2. Each boiler shall have at least one safety valve and, if it has more than 500 square feet of water-heating surface or an electric power input of more than 500 kilowatts, it shall have two or more safety valves.
3. The valve or valves shall be connected to the boiler, independent of any other steam connection, and attached as close as possible to the boiler without unnecessary intervening pipe or fittings. Where alteration is required to conform to this requirement, the chief inspector shall allow the owner or user reasonable time in which to complete the work.
4. No valves of any description shall be placed between the safety valve and the boiler nor on the escape pipe, if used, between the safety valve and the atmosphere, except as provided by applicable sections of the ASME Code. When an escape pipe is used, it shall be at least full size of the safety-valve discharge and fitted with an open drain to prevent water lodging in the upper part of the safety valve or escape pipe. When an elbow is placed on a safety valve escape pipe, it shall be located close to the safety-valve outlet or the escape pipe shall be anchored and supported securely. All safety valve discharges shall be located or piped as not to endanger persons working in the area.
5. The safety-valve capacity of each boiler shall be so that the safety valve or valves will discharge all the steam that can be generated by the boiler without allowing the pressure to rise more than 6.0% above the highest pressure to which any valve is set, and in no case to more than 6.0% above the maximum allowable working pressure.
6. One or more safety valves on every boiler shall be set at or below the maximum allowable working pressure. The remaining valves may be set within a range of 3.0% above the maximum

allowable working pressure, but the range of setting of all the safety valves on a boiler shall not exceed 10% of the highest pressure to which any valve is set.

7. When two or more boilers, operating at different pressures and safety valve settings, are interconnected, the lower pressure boilers or interconnected piping shall be equipped with safety valves of sufficient capacity to prevent overpressure, considering the maximum generating capacity of all boilers.

8. In those cases where the boiler is supplied with feedwater directly from water mains without the use of feeding apparatus (not to include return traps), no safety valve shall be set at a pressure higher than 94% of the lowest pressure obtained in the supply main feeding the boiler.

9. The relieving capacity of the safety valves on any boiler shall be checked by one of the three following methods and, if found to be insufficient, additional valves shall be provided:

a. By making an accumulation test, which consists of shutting off all other steam-discharge outlets from the boiler and forcing the fires to the maximum. The safety-valve capacity shall be sufficient to prevent a rise of pressure in excess of 6.0% of the maximum allowable working pressure. This method shall not be used on a boiler with a superheater or reheater.

b. By measuring the maximum amount of fuel that can be burned and computing the corresponding evaporative capacity (steam-generating capacity) upon the basis of the heating value of fuel. These computations shall be made as outlined in the appendix of the ASME Code, Section I;

c. By measuring the maximum amount of feedwater that can be evaporated.

When either of the methods (b or c) outlined in this subdivision is employed, the sum of the safety-valve capacities shall be equal to or greater than the maximum evaporative capacity (maximum steam-

generating capacity) of the boiler.

10. The relieving capacity of safety valves for forced-flow steam generators shall be in accordance with the requirements of Section I of the ASME Boiler Code.

11. Safety valves and safety relief valves requiring repair shall be replaced with a new valve or repaired by the original manufacturer, its authorized representative or the holder of a "VR" Stamp.

G. Boiler feeding.

1. Each boiler shall have a feed supply which will permit it to be fed at any time while under pressure.

2. A boiler having more than 500 square feet of water-heating surface shall have at least two means of feeding, one of which shall be an approved feed pump or injector. A source of feed directly from water mains at a pressure 6.0% greater than the set pressure of the safety valve with the highest setting may be considered one of the means. As provided in the ASME Power Boiler Code, Section I, boilers fired by gaseous, liquid or solid fuel in suspension may be equipped with a single means of feeding water provided means are furnished for the immediate shutoff of heat input if the water feed is interrupted.

3. The feedwater shall be introduced into the boiler in a manner so that it will not be discharged close to riveted joints of shell or furnace sheets, or directly against surfaces exposed to products of combustion, or to direct radiation from the fire.

4. The feed piping to the boiler shall be provided with a check valve near the boiler and a valve or cock between the check valve and the boiler. When two or more boilers are fed from a common source, there shall also be a valve on the branch to each boiler between the check valve and source of supply.

Whenever a globe valve is used on feed piping, the inlet shall be under the disk of the valve.

5. In all cases where returns are fed back to the boiler by gravity, there shall be a check valve and stop valve in each return line, the stop valve to be placed between the boiler and the check valve, and both shall be located as close to the boiler as is practicable. No stop valves shall be placed in the supply and return pipe connections of a single boiler installation.

6. Where deaerating heaters are not employed, the temperature of the feedwater shall not be less than 120°F to avoid the possibility of setting up localized stress. Where deaerating heaters are employed, the minimum feedwater temperature shall not be less than 215°F so that dissolved gases may be thoroughly released.

H. Water level indicators.

1. Each boiler shall have at least one water gauge glass installed and located so that the lowest visible part of the water glass shall be at least two inches above the lowest permissible water level, at which level there will be no danger of overheating any part of the boiler when in operation at that level; except as provided by the ASME Code.

2. No outlet connections (except for damper regulator, feedwater regulator, low-water fuel cutout, drain, steam gauges, or such apparatus that does not permit the escape of an appreciable amount of steam or water from it) shall be placed on the piping that connects the water column to the boiler. The water column shall be provided with a valved drain of at least 3/4 inch pipe size; the drain is to be piped to a safe location.

3. When the direct reading of gauge glass water level is not readily visible to the operator in his working area dependable indirect indications shall be provided utilizing remote level indicators or equipment to

transmit the gauge glass image. When remote level indication is provided for the operator instead of the gauge glass, the minimum level reference shall be clearly marked.

I. Steam gauges.

1. Each steam boiler shall have a steam gauge, with dial range not less than 1-1/2 times the maximum allowable working pressure, connected to the steam space or to the steam connection to the water column. The steam gauge shall be connected to a siphon or equivalent device of

sufficient capacity to keep the gauge tube filled with water and arranged so that the gauge cannot be shut off from the boiler except by a cock with a tee or lever handle placed in the pipe near the gauge.

The handle of the cock shall be parallel to the pipe in which it is located when the cock is open.

2. When a steam gauge connection longer than eight feet becomes necessary, a shutoff valve may be used near the boiler provided the valve is of the outside-screw-and-yoke type and is locked open. The line shall be of ample size with provision for free blowing.

3. Each boiler shall be provided with a test gauge connection and suitable valving for the exclusive purpose of attaching a test gauge so that the accuracy of the boiler steam gauge may be ascertained while the boiler is in operation.

J. Stop valves.

1. Except for a single-boiler, prime-mover installation, each steam outlet from a boiler (except safety valve and water column connections) shall be fitted with a stop valve located as close as practicable to the boiler.

2. In a single-boiler, prime-mover installation the steam stop valve may be omitted provided the prime-mover throttle valve is equipped with an indicator to show whether the valve is open or closed and is designed to withstand the required hydrostatic pressure test of the boiler.
3. When a stop valve is so located that water can accumulate, ample drains shall be provided. The drainage shall be piped to a safe location and shall not be discharged on the top of the boiler or its setting.
4. When boilers provided with manholes are connected to a common steam main, the steam connection from each boiler shall be fitted with two stop valves having an ample free-blow drain between them. The discharge of the drain shall be visible to the operator and shall be piped clear of the boiler setting. The stop valves shall consist preferably of one automatic nonreturn valve (set next to the boiler) and a second valve of the outside-screw-and-yoke type.

K. Blowoff connection.

1. The construction of the setting around each blowoff pipe shall permit free expansion and contraction. Careful attention shall be given to the problem of sealing these setting openings without restricting the movement of the blowoff piping.
2. All blowoff piping, when exposed to furnace heat, shall be protected by firebrick or other heat-resisting material constructed so that the piping may be inspected.
3. Each boiler shall have a blowoff pipe, fitted with a valve or cock, in direct connection with the lowest water space. Cocks shall be of the gland or guard type and suitable for the pressure allowed. The use of globe valves shall not be permitted. Where the maximum allowable working pressure exceeds 100 psig,

each blowoff pipe shall be provided with two valves or a valve and cock; however only one valve need be provided for forced-flow steam generators with no fixed steam and waterline; high-temperature water boilers and those used for traction or portable purposes with less than 100 gallons normal water content.

4. Blowoff piping shall comply with the requirements of the ASME Code, Section I, and ANSI B31.1, from the boiler to the valve or valves, and shall be run full size without use of reducers or bushings. All piping shall be steel. Galvanized steel pipe and fittings shall not be used for blowoff piping.

5. All fittings between the boiler and blowoff valve shall be of steel. In case of renewal of blowoff pipe or fittings, they shall be installed in accordance with this chapter for new installations.

L. Repairs and renewals of boiler fittings and appliances. Whenever repairs are made to fittings or appliances or it becomes necessary to replace them, such repairs or replacements shall comply with the requirements for new installations.

M. Each automatically fired steam boiler or system of commonly connected steam boilers shall have at least one steam pressure control device that will shut off the fuel supply to each boiler or system of commonly connected boilers when the steam pressure reaches a preset maximum operating pressure. In addition, each individual automatically fired steam boiler shall have a high steam pressure limit control that will prevent generation of steam pressure in excess of the maximum allowable working pressure.

N. Conditions not covered by this chapter. All cases not specifically covered by this chapter shall be treated as new installations pursuant to 16VAC25-50-280 or may be referred to the chief inspector for instructions concerning the requirements.

16VAC25-50-380. Pressure vessels.

A. Maximum allowable working pressure for standard pressure vessels. The maximum allowable working pressure for standard pressure vessels shall be determined in accordance with the applicable provisions of the edition of the ASME or API-ASME code under which they were constructed and stamped. The maximum allowable working pressure shall not be increased to a greater pressure than shown on the manufacturers nameplate stamping and data report.

B. Maximum allowable working pressure for nonstandard pressure vessels

1. For internal pressure. The maximum allowable working pressure on the shell of a nonstandard pressure vessel shall be determined by the strength of the weakest course computed from the thickness of the plate, the tensile strength of the plate, the efficiency of the longitudinal joint, the inside diameter of the weakest course and the factor set by this chapter.

$$\frac{TS t E}{RFS} = \text{maximum allowable working pressure, psi}$$

where:

TS = ultimate tensile strength of shell plate, psi. When the tensile strength of the steel plate is not known, it shall be taken as 55,000 psi for temperatures not exceeding 700°F.

t = minimum thickness of shell plate of weakest course, inches,

E = efficiency of longitudinal joint depending upon construction. Use the following values:

For riveted joints -- calculated riveted efficiency;

For fusion-welded joints:

Single lap weld	40%
Double lap weld	50%
Single butt weld	60%
Double butt weld	70%
Forge weld	70%
Brazed steel	80%

R = inside radius of weakest course of shell, inches, provided the thickness does not exceed 10% of the radius. If the thickness is over 10% of the radius, the outer radius shall be used.

FS = factor of safety allowed by this chapter.

2. For external pressure. The maximum allowable working pressure for cylindrical nonstandard pressure vessels subjected to external or collapsing pressure shall be determined by the rules in Section VIII, Division 1, of the ASME Code.

3. Factors of safety. The minimum factor of safety shall in no case be less than ~~four~~ 3.5 for ~~existing installations~~ vessels built on or after January 1, 1999. For vessels built prior to January 1, 1999, the minimum factor of safety shall in no case be less than 4.0. The factor of safety may be increased when deemed necessary by the inspector to insure the operation of the vessel within safe limits. The condition of the vessel and the particular service of which it is subject will be the determining factors.

4. The maximum allowable working pressure permitted for formed heads under pressure shall be determined by using the appropriate formulas from Section VIII, Division 1, ASME Code and the tensile strength and factors of safety given in subdivisions 1 and 3 of this subsection.

C. Inspection of inaccessible parts. Where in the opinion of the inspector, as the result of conditions disclosed at the time of inspection, it is advisable to remove the interior or exterior lining, covering, or brickwork to expose certain parts of the vessel not normally visible, the owner or user shall remove the materials to permit proper inspection and to establish construction details. Metal thickness shall be determined utilizing appropriate equipment including drilling if necessary.

D. Pressure relief devices. Pressure relief devices for each pressure vessel installation, not exempt by the Act, shall comply with the requirements of ASME Pressure Vessel Code, Section VIII.

E. Safety appliances.

1. Each pressure vessel shall be protected by safety and relief valves and indicating and controlling devices which will insure its safe operation. These valves and devices shall be constructed, located and installed so that they cannot readily be rendered inoperative. The relieving capacity of the safety valves shall prevent a rise of pressure in the vessel of more than

10% above the maximum allowable working pressure, taking into account the effect of static head. Safety valve discharges shall be located or piped so as not to endanger persons working in the area.

2. Safety valves and safety relief valves requiring repair shall be replaced with a new valve or repairs shall be performed by the original manufacturer, its authorized representative, or the holder of a "VR" stamp.

F. Repairs and renewals of fittings and appliances. Whenever repairs are made to fittings or appliances, or it becomes necessary to replace them, the repairs or replacements shall comply with requirements for new installations.

G. Conditions not covered by this chapter. All cases not specifically covered by this chapter shall be treated as new installations or may be referred to the chief inspector for instructions concerning the requirements.

16VAC25-50-430. Hydrostatic pressure tests.

A. A hydrostatic pressure test, when applied to boilers or pressure vessels, shall not exceed ~~1½~~ 1.25 times the maximum allowable working pressure, except as provided by the ASME Code.

The pressure shall be under proper control so that in no case shall the required test pressure be exceeded by more than 2.0%.

B. See 16 VAC25-50-360 A 4 for temperature limitations on particular power boiler installations.

C. When a hydrostatic test is to be applied to existing installations, the pressure shall be as follows:

1. For all cases involving the question of tightness, the pressure shall be equal to the working pressure.

2. For all cases involving the question of safety, the test pressure shall be equal to 1½ not exceed 1.25 times the maximum allowable working pressure for temperature. During such test the safety valve or valves shall be removed or each valve disk shall be held to its seat by means of a testing clamp and not by screwing down the compression screw upon the spring.

16VAC25-50-480. Repairs and alterations.

A. Prior to any repair, the owner or user shall notify a special inspector with the appropriate endorsement for direction or advice, or both, regarding the method and extent of repair.

B. Repairs to boilers and pressure vessels shall be done in accordance with the National Board Inspection Code by holders of an "R" Certificate of Authorization. The completed repairs shall be reviewed by and found acceptable to the inspector or the same inspection agency who authorized the repair.

C. Alterations to boilers and pressure vessels shall be performed by an organization holding an appropriate ASME or "R" Certificate of Authorization and shall be in accordance with the National Board Inspection Code.

D. All repairs and alterations, ~~except seal welds as defined in this subsection,~~ shall be reported on the applicable Report of ~~Welded~~ Repair or Alteration form. The completed form including proper

certification shall be forwarded to the chief inspector by the organization performing the repair or alteration. ~~A seal weld is a tube to tubesheet weld used to supplement an expanded tube joint to ensure leak tightness. Seal welds on carbon steel (P-1) tube joints made by qualified welders will not require an inspection nor a Form R-1.~~

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E. The completed forms for routine repairs, as the term is defined in the National Board Inspection Code, need not be forwarded to the chief inspector.

FORMS

R 1 Form, Report of Welded _____ Repair or _____ Alteration, CVR1 Rev 1.0.

Form R-1, Report of ~~Welded~~ Repair, National Board Inspection Code (eff. 1/1/99).

Form R-2, Report of Alteration, National Board Inspection Code (eff. 1/1/99).

Form R-3, Report of Parts Fabricated By Welding, National Board Inspection Code (eff. 1/1/99).

Form R-4, Report Supplementary Sheet, National Board Inspection Code (eff. 1/1/99).

BPV-5, Boiler or Pressure Vessel Data Report – First Internal Inspection (eff. 1/1/99).

BPV-6, Boiler – Fired Pressure Vessel – Report of Inspection (eff. 1/1/99).

Documents Incorporated by Reference

~~2001~~ 2007 Boiler and Pressure Vessel Code, ASME Code, American Society of Mechanical Engineers.

National Board Bylaws, National Board of Boiler and Pressure Vessel Inspectors, August 8, 1996.

ANSI/NB 23, ~~2004~~ 2007 National Board Inspection Code, National Board of Boiler and Pressure Vessel Inspectors.

ASME B 31.1, ASME Code for ~~Pressure~~ Power Piping, American National Standards Institute, ~~1998~~ ~~2006~~ 2007.

NFPA 85 Boiler and Combustion Systems Hazards, 2001 Edition, National Fire Protection Association.

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Part CG (General), Part CW (Steam and Waterside Control) and Part CF (Combustion Side Control) Flame Safeguard of ANSI/ASME CSD-1, Controls and Safety Devices for Automatically ~~fired~~ Fired Boilers, ~~1998~~ ~~2006~~ 2009, American Society of Mechanical Engineers.

“Boiler Blowoff Equipment,” National Board of Boiler and Pressure Vessel Inspectors, Rules and Recommendations for the Design and Construction of Boiler Blowoff Systems, 1991.

API510, Pressure Vessel Inspection Code, Maintenance Inspection, Rating, Repair and Alteration, ~~Sixth~~ Seventh Edition, ~~June 1989~~ June 2006, American Petroleum Institute.



COMMONWEALTH of VIRGINIA
DEPARTMENT OF LABOR AND INDUSTRY

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VIRGINIA SAFETY AND HEALTH CODES BOARD

BRIEFING PACKAGE FOR

JANUARY 14, 2010

**Revised Proposed Regulation to Amend 16 VAC 25-60,
Administrative Regulation for the Virginia Occupational Safety and Health (VOSH) Program,
16 VAC 25-60-240 and 16 VAC 25-60-245, Take and Preserve Testimony, Examine Witnesses
and Administer Oaths**

I. Action Requested.

The Virginia Occupational Safety and Health (VOSH) Program requests the Safety and Health Codes Board to consider for adoption as a **revised** proposed regulation of the Board the following VOSH proposal to amend the Administrative Regulation for the VOSH Program, by amending 16 VAC 25-60-240, and adding a new section 16 VAC 25-60-245 to establish procedures for the Commissioner or his appointed representatives under Va. Code §40.1-6(5) to take and preserve testimony, examine witnesses and administer oaths under Va. Code §§40.1-6(4) and 40.1-10, pursuant to Va. Code §40.1-22(5).

II. Summary of Rulemaking Process.

A Notice of Intended Regulatory Action (NOIRA) was adopted by the Board on October 18, 2007. The NOIRA was published on February 4, 2008, with a 30-day comment period ending on March 6, 2008. No comments were received.

The Board adopted proposed regulatory language on July 10, 2008. The proposed regulation was published on March 16, 2009, with a 60-day comment period ending on May 15, 2009. A public hearing was held by the Board on April 16, 2009. No comments were received. The Board adopted **final** regulatory language on August 13, 2009. The final regulation was submitted to the Department of Planning and Budget (DPB) for Executive Branch review on September 11, 2009. DPB completed its review on September 23, 2009. Although DPB's policy memo is considered Governor's Confidential Working Papers, Department staff were informed that DPB had recommended the final regulation "**with reservations.**"

DPB's reservations involved the change to 16VAC25-60-90.B, concerning a witnesses' ability to obtain a copy of their interview statement, and was based on the following factors:

- it is a significant change with the potential to impact numerous employees;
- this change is being added at the final stage without the opportunity for extensive analysis and public comment; and
- it is unclear whether a change to a substantive right exceeds the scope of the NOIRA.

DPB had suggested to Department staff that the Board either: (1) consider withdrawing the package and submitting it as a revised proposed regulation, or (2) removing the change to §90.B. and submitting them later as a separate action.

Department staff recommend pursuing option (1) by re-submitting the regulation as a revised proposed regulation and requesting the Board's approval to publish it subject to a comment period of at least 30 days, pursuant to Va. Code §2.2-4007.03, which provides:

"If an agency wishes to change a proposed regulation before adopting it as a final regulation, it may choose to publish a revised proposed regulation, provided the latter is subject to a public comment period of at least 30 additional days and the agency complies in all other respects with this section."

As discussed further below, Department staff also recommend changing the language in the interview statement section. The language below in brackets/red is the language deleted in the original final regulation. Department staff recommend reinserting the original language and adding the phrase "pursuant to §40.1-11 of the Code of Virginia":

B. Interview statements of employers, owners, operators, agents, or employees given to the commissioner in confidence pursuant to § [40.1-49.8](#) of the Code of Virginia shall not be disclosed **[for any purpose, except to the individual giving the statement] in accordance with the provisions of §40.1-11 of the Code of Virginia.**

III. Summary of Proposed Regulation.

The VOSH Program seeks the amendment of the Administrative Regulation for the VOSH

Program to establish procedures for the Commissioner or his appointed representatives under VA. Code §40.1-6(5) to take and preserve testimony, examine witnesses and administer oaths under Va. Code §§40.1-6(4) and 40.1-10.

Following are the requirements of Va. Code §§40.1-6(4) and 40.1-10:

Va. Code §40.1-6(4), Powers and duties of the Commissioner.

“The Commissioner shall:

....

(4) In the discharge of his duties, have power to take and preserve testimony, examine witnesses and administer oaths and to file a written or printed list of relevant interrogatories and require full and complete answers to the same to be returned under oath within thirty days of the receipt of such list of questions. “ (Emphasis added).

Va. Code §40.1-10, Offenses in regard to examinations, inspections, etc.

“If any person who may be sworn to give testimony shall willfully fail or refuse to answer any legal and proper question propounded to him concerning the subject of such examination as indicated in §§ 40.1-6, or if any person to whom a written or printed list of such interrogatories has been furnished by the Commissioner shall neglect or refuse to answer fully and return the same under oath, or if any person in charge of any business establishment shall refuse admission to, or obstruct in any manner the inspection or investigation of such establishment or the proper performance of the authorized duties of the Commissioner or any of his representatives, he shall be guilty of a misdemeanor. Such person, upon conviction thereof, shall be fined not exceeding \$100 nor less than \$25 or imprisoned in jail not exceeding 90 days, or both.” (Emphasis added).

The revised proposed regulation:

- Specifies the wording of the oath to be administered and the manner in which it would be administered;
- Explains the manner in which the Commissioner would appoint in writing Department personnel as his representatives having the authority to administer such oaths and having the authority to examine witnesses in accordance with the procedures outlined in the regulation;
- Specifies that testimony preserved under the regulation would be recorded by a court reporter;
- Specifies the level of confidentiality that would attach to any testimony preserved under the statute;
- Establishes a procedure for the Commissioner or his authorized representatives to follow in the event that any employer refuses to make an employee or supervisor available to provide testimony in accordance with Va. Code 40.1-6(4). The proposed regulation

provides that an application for an inspection warrant under Va. Code §§40.1-49.8 through 40.1-49.12 for VOSH investigations/inspections will be submitted to the local General District or Circuit Court with jurisdiction over the employer.

- Establishes a procedure for the Commissioner or his authorized representatives to follow in the event that any person who has sworn to give testimony willfully refuses or fails to answer any legal and proper question in accordance with Va. Code §§40.1-10 and 40.1-6(4), up to and including referring such refusal to the appropriate Commonwealth's Attorney for prosecution of the individual involved.
- Recommended housekeeping changes to the proposed regulation are primarily in response to a request from the Registrar of Regulations to correct sections which do not comply with Virginia Administrative Code (VAC) formatting requirements:
 - Section 10, Definitions, definitions are put in alphabetical order.
 - Section 20, Jurisdiction, sections are renumbered, and cross-references to other sections in the regulation are put in proper VAC format.
 - Section 90, Release of information and disclosure pursuant to requests under the Virginia Freedom of Information Act and subpoenas, the following language was amended:

B. Interview statements of employers, owners, operators, agents, or employees given to the commissioner in confidence pursuant to § [40.1-49.8](#) of the Code of Virginia shall not be disclosed **[for any purpose, except to the individual giving the statement in accordance with the provisions of §40.1-11 of the Code of Virginia].**

The Department recommends the above language change in Section 90 as a result of several enforcement cases over the last two years where attorneys for employers have independently identified employees that were interviewed during the VOSH inspection and begun having the employees request copies of their confidential interview statements so the employer could then review the statements. This practice could compromise an employee's willingness in future accident investigations to provide a statement to VOSH, or to be completely forthcoming with regards to safe working conditions on the job site, if they know their employer can gain access to the interview statement; and runs contrary to the legal principal in the Labor Laws of Virginia that provides that witness statements taken by VOSH inspectors are to remain private/confidential. Va. Code §40.1-49.8(2) provides that our inspectors are permitted to "question privately any such employer, owner, operator, agent or employee."

The revised language in this section will retain the basic right of a witness to a copy of his/her interview statement but will make it clear that release of the statement must be in keeping with the purposes of the Labor Laws of Virginia, as required by Va. Code §40.1-11, which provides that:

“Neither the Commissioner nor any employee of the Department shall make use of or reveal any information or statistics gathered from any person, company or corporation for any purposes other than those of this title.”

- Section 100, Complaints, cross-references to other sections in the regulation were put in proper VAC format.
- Section 130, Construction industry standards, sections renumbered.
- Cross-references to other sections in the regulation were put in proper Virginia Administrative Code format for the following sections:
 - 140, Agricultural standards
 - 190, General provisions
 - 210, Permanent variances
 - 220, Interim order
 - 260, Issuance of citation and proposed penalty
 - 270, Contest of citation or proposed penalty
 - 280, General contest proceedings applicable to the public sector
 - 310, Contest of abatement period
 - 320, Extension of abatement time
 - 330, Informal Conference
 - 340, Settlement

IV. Basis, Purpose and Impact of the Proposed Rulemaking.

A. Basis for Proposed Action.

The Safety and Health Codes Board is authorized by Title 40.1-22(5) to:

“... adopt, alter, amend, or repeal rules and regulations to further, protect and promote the safety and health of employees in places of employment over which it has jurisdiction and to effect compliance with the federal OSH Act of 1970...as may be necessary to carry out its functions established under this title.

....

In making such rules and regulations to protect the occupational safety and health of employees, the Board shall adopt the standard which most adequately assures, to the extent feasible, on the basis of the best available evidence that no employee will suffer material impairment of health or functional capacity. However, such standards shall be at least as stringent as the standards promulgated by the federal OSH Act of 1970 (P.L.91-596). In addition to the attainment of the highest degree of health and safety protection for the employee, other considerations shall be the latest available scientific data in the field, the feasibility of the standards, and experiences gained under this and other health and safety laws.”

Va. Code §2.2-4007.03.B. provides:

“If an agency wishes to change a proposed regulation before adopting it as a final regulation, it may choose to publish a revised proposed regulation, provided the latter is subject to a public comment period of at least 30 additional days and the agency complies in all other respects with this section.”

Va. Code § 2.2-4007.06 provides:

“If one or more changes with substantial impact are made to a proposed regulation from the time that it is published as a proposed regulation to the time it is published as a final regulation, any person may petition the agency within 30 days from the publication of the final regulation to request an opportunity for oral and written submittals on the changes to the regulation. If the agency receives requests from at least 25 persons for an opportunity to submit oral and written comments on the changes to the regulation, the agency shall (i) suspend the regulatory process for 30 days to solicit additional public comment and (ii) file notice of the additional 30-day public comment period with the Registrar of Regulations, unless the agency determines that the changes made are minor or inconsequential in their impact. The comment period, if any, shall begin on the date of publication of the notice in the Register. Agency denial of petitions for a comment period on changes to the regulation shall be subject to judicial review.”

In fatal and non-fatal accident investigations particularly and more routine inspections as well, VOSH inspectors are required to interview one or more employees and supervisors. VOSH personnel sometimes encounter witnesses/employees/supervisors who refuse to talk with our inspectors or avoid answering specific questions for a variety of reasons. Some employees and supervisors have refused to talk with our inspectors after talking with either the company attorney or a private attorney hired by the individual. Although such refusals are rare, they can have a significant impact on the promptness, thoroughness and quality of the investigation.

It is a generally accepted investigative principle that the closer in time to an event that information about the event is obtained from witnesses, the better the chance is that the information will be accurate. Refusals can result in delays in obtaining witness statements immediately after the accident occurs, potentially resulting in altered memories and less accurate information concerning the cause of the accident.

In addition, the investigative process is often a very fluid one, where statements made by one witness can lead to additional questions being asked of other witnesses, or previously undisclosed documents being obtained from the employer. Such refusals can not only

result in the loss of the individuals' testimony, but can also result in the loss of other potential leads in the investigation. Early access to such information will result in higher quality investigations, and better and more accurate outcomes.

When such refusals do occur, the inability to gather crucial information from eyewitnesses and sometimes the testimony of the injured employee greatly hampers the VOSH program's ability to complete a full and fair investigation of the accident in a timely manner - Va. Code §40.1-49.4.A.3 requires VOSH to issue citations within six months following the occurrence of any alleged violation. The Commissioner's statutory authority to take and preserve testimony, examine witnesses and administer oaths, if implemented through regulation, could be used to obtain necessary testimony very early in the investigative process, avoiding delays and potentially altered memories.

B. Purpose.

The purpose of the proposed regulation is to provide VOSH personnel with procedures on how to exercise the Commissioner's statutory authority to take and preserve testimony, examine witnesses and administer oaths, in instances where witnesses/employees/supervisors refuse requests for interviews or refuse to answer specific questions posed by a VOSH inspector.

C. Impact on Employers.

Employers would have to make employees available for private interview as identified by the Commissioner or his representative in accordance with procedures in the proposed regulation implementing the statutory requirements in Va. Code §§40.1-6(4) and 40.1-10. The Commissioner currently has the statutory authority to "question privately any such employer, owner, operator, agent or employee" during a VOSH inspection in accordance with Va. Code §40.1-49.8(2). As noted previously, VOSH investigation procedures provide for employee interviews on all inspections, and employers, as a regular course of business, make their employees available for such interviews without limitation. VOSH does not believe the proposed regulation will have a significant cost impact on employers for the following reasons:

- VOSH estimates that it will seek to use the new procedures in the proposed regulation to require an employer to make an employee available for an interview on an average of five or fewer cases per year.
- The average length of a VOSH interview is normally 15 minutes or less; however, in accident cases an interview may last up to 60-90 minutes. Significant down time for employers or employees is not anticipated.
- Interview locations would normally be at the employer's worksite, an agreed to alternate site, or at the local VOSH Office. Significant travel costs are not anticipated.
- VOSH will assume the cost of transcription services.

D. Impact on Employees.

Employees would have to provide testimony in accordance with any procedures implementing the statutory requirements in Va. Code §§40.1-6(4) and 40.1-10. As noted previously, VOSH investigation procedures provide for employee interviews on all inspections, and employees and supervisory personnel regularly agree, without limitation, to be interviewed. VOSH does not believe the proposed regulation will have a significant cost impact on employees for the reasons listed in C. above.

E. Impact on the Department of Labor and Industry.

The Department would have to designate and train personnel on the procedures implementing the statutory requirements in Va. Code §§40.1-6(4) and 40.1-10. The average cost of transcription services for a one hour interview is approximately \$200. The VOSH Program estimates that annual costs for interviews under the proposed regulations would be \$1,000 or less.

Contact Person:

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RECOMMENDED ACTION

Staff of the Department of Labor and Industry recommends that the Safety and Health Codes Board consider for adoption as a revised proposed regulation of the Board, amendments to 16 VAC 25-60, the Administrative Regulation for the Virginia Occupational Safety and Health (VOSH) Program, which include the revision of 16 VAC 25-240 and the addition of 16 VAC 25-60-245, to establish procedures for the Commissioner or his appointed representatives under 40.1-6(5) to take and preserve testimony, examine witnesses and administer oaths under Va. Code §§40.1-6(4) and 40.1-10.

Staff of the Department of Labor and Industry recommends that the Safety and Health Codes Board approve an additional 30-day public comment period for the revised proposed amendments to 16 VAC 25-60, the Administrative Regulation for the Virginia Occupational Safety and Health (VOSH) Program pursuant to Va. Code §§40.1-22(5), and 2.2-4007.03.

The Department also recommends that the Board state in any motion it may make to amend this regulation that it will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision of this or any other regulation.

**Revised Proposed Regulation to Amend 16 VAC 25-60,
Administrative Regulation for the Virginia Occupational Safety and Health (VOSH) Program,
16 VAC 25-60-240 and 245, Take and Preserve Testimony, Examine Witnesses
and Administer Oaths**

As Adopted by the

Safety and Health Codes Board

Date: _____



VIRGINIA OCCUPATIONAL SAFETY AND HEALTH PROGRAM

VIRGINIA DEPARTMENT OF LABOR AND INDUSTRY

Effective Date: _____

16 VAC 25-60-240, Walkthrough

16 VAC 25-60-245, Take and Preserve Testimony, Examine Witnesses and Administer Oaths

Part I

Definitions

16VAC25-60-10. Definitions.

The following words and terms when used in this chapter shall have the following meanings unless the context clearly indicates otherwise:

"Abatement period" means the period of time defined or set out in the citation for correction of a violation.

["Board" means the Safety and Health Codes Board.]

"Bureau of Labor Statistics" means the Bureau of Labor Statistics of the United States Department of Labor.

"Citation" means the notice to an employer that the commissioner has found a condition or conditions that violate Title 40.1 of the Code of Virginia or the standards, rules or regulations established by the commissioner or the board.

~~["Board" means the Safety and Health Codes Board.]~~

"Commissioner" means the Commissioner of Labor and Industry. Except where the context clearly indicates the contrary, any such reference shall include his authorized representatives.

....

Part II

General Provisions

16VAC25-60-20. Jurisdiction.

All Virginia statutes, standards, and regulations pertaining to occupational safety and health shall apply to every employer, employee and place of employment in the Commonwealth of Virginia except where:

~~[A. 1.]~~ The United States is the employer or exercises exclusive jurisdiction;

~~[B. 2.]~~ The federal Occupational Safety and Health Act of 1970 does not apply by virtue of § 4(b)(1) of that Act. The commissioner shall consider **~~[F f]~~** federal OSHA case law in determining where jurisdiction over specific working conditions has been preempted by the regulations of a federal agency; or

~~[C. 3.]~~ The employer is a public employer, as that term is defined in this chapter. In such cases, the Virginia laws, standards and regulations governing occupational safety and health are applicable as stated

including **~~[[§§ 10, 30, 280, 290 and 300 of these regulations-16VAC25-60-10, 16VAC25-60-30,~~**

~~16VAC25-60-280, 16VAC25-60-290, and 16VAC25-60-300.]~~

....

16VAC25-60-90. Release of information and disclosure pursuant to requests under the Virginia Freedom of Information Act and subpoenas.

....

B. Interview statements of employers, owners, operators, agents, or employees given to the commissioner in confidence pursuant to § [40.1-49.8](#) of the Code of Virginia shall not be disclosed **[for any purpose, except to the individual giving the statement in accordance with the provisions of §40.1-11 of the Code of Virginia].**

....

16VAC25-60-100. Complaints.

....

F.

...

2. A complaint investigation, which does not involve onsite activity, shall normally be conducted for all complaints that do not meet the criteria listed in **[§100.F.1 above subdivision 1 of this subsection.]**

3. The commissioner reserves the right, for good cause shown, to initiate an inspection with regard to certain complaints that do not meet the criteria listed in **[§100.F.1 above; subdivision 1 of this subsection;]** as well as to decline to conduct an inspection and instead conduct an investigation, for good cause shown, when certain complaints are found to otherwise meet the criteria listed in subdivision 1 of this subsection.

....

Part III

Occupational Safety and Health Standards

....

16VAC25-60-130. Construction industry standards.

....

[A-1.] For the purposes of the applicability of such Part 1926 standards, the key criteria utilized to make such a decision shall be the activities taking place at the worksite, not the primary business of the employer. Construction work shall generally include any building, altering, repairing, improving, demolishing, painting or decorating any structure, building, highway, or roadway; and any draining, dredging, excavation, grading or similar work upon real property. Construction also generally includes work performed in traditional construction trades such as carpentry, roofing, masonry work, plumbing, trenching and excavating, tunneling, and electrical work. Construction does not include maintenance, alteration or repair of mechanical devices, machinery, or equipment, even when the mechanical device, machinery or equipment is part of a pre-existing structure.

~~[B. 2.]~~ Certain standards of 29 CFR Part 1910 have been determined by federal OSHA to be applicable to construction and have been adopted for this application by the board.

~~[C. 3.]~~ The standards adopted from 29 CFR Part 1910.19 and 29 CFR Part 1910.20 containing respectively, special provisions regarding air contaminants and requirements concerning access to employee exposure and medical records shall apply to construction work as well as general industry.

....

16VAC25-60-140. Agriculture standards.

....

For the purposes of applicability of such Part 1910 and Part 1928 standards, the key criteria utilized to make a decision shall be the activities taking place at the worksite, not the primary business of the employer. Agricultural operations shall generally include any operation involved in the growing or harvesting of crops or the raising of livestock or poultry, or activities integrally related to agriculture, conducted by a farmer or agricultural employer on sites such as farms, ranches, orchards, dairy farms or similar establishments. Agricultural operations do not include construction work as described in ~~[\\$130.1 of this regulation subdivision 1 of 16VAC25-60-130]~~, nor does it include operations or activities substantially similar to those that occur in a general industry setting and are therefore not unique and integrally related to agriculture.

....

Part IV

Variances

16VAC25-60-190. General provisions.

....

B. In addition to the information specified in ~~[\\$200.A and 210.A of this regulation 16VAC25-60-200 A and 16VAC25-60-210 A]~~, every variance application shall contain the following:

1. A statement that the applicant has informed affected employees of the application by delivering a copy of the application to their authorized representative, if there is one, as well as having posted, in accordance with ~~[\\$40 of these regulations 16VAC25-60-40]~~, a summary of the application which indicates where a full copy of the application may be examined;

....

F. The commissioner will grant a variance request only if it is found that the employer has met by a preponderance of the evidence, the requirements of either ~~[\\$200.B.4. or §210.B.4. of these regulations 16VAC25-60-200 B 4 or 16VAC25-60-210 B 4]~~.

....

2. The employer shall post a copy of the commissioner's decision in accordance with ~~[\\$40 of these regulations 16VAC25-60-40]~~.

....

G. Any party may within 15 days of the commissioner's decision file a notice of appeal to the board. Such appeal shall be in writing, addressed to the board, and include a statement of how other affected parties have been notified of the appeal. Upon notice of a proper appeal, the commissioner shall advise the board of the appeal and arrange a date for the board to consider the appeal. The commissioner shall advise the employer and employee representative of the time and place that the board will consider the appeal. Any party that submitted written or oral views or participated in the hearing concerning the original application for the variance shall be invited to attend the appeal hearing. If there is no employee representative, a copy of the commissioner's letter to the employer shall be posted by the employer in accordance with the requirements of ~~[\\$40 of these regulations 16VAC25-60-40]~~.

....

16VAC25-60-210. Permanent variances.

A. Applications filed with the commissioner for a permanent variance from a standard or regulation shall be subject to the requirements of ~~[\\$190 of these regulations 16VAC25-60-190]~~ and the following additional requirements.

....

16VAC25-60-220. Interim order.

....

B. A letter of application for an interim order shall include statements as to why the interim order should be granted and shall include a statement that it has been posted in accordance with ~~[\\$40 of these regulations 16VAC25-60-40]~~. The provisions contained in ~~[\\$§190.A, 190.B.1, and 190.B.3. of these regulations 16VAC25-60-190 A, B 1 and B 3]~~ shall apply to applications for interim orders in the same manner as they do to variances.

....

16 VAC 25-60-240

Walkthrough

Walkthrough by the commissioner for the inspection of any workplace includes the following privileges.

1. The commissioner shall be in charge of the inspection and, as part of an inspection, may question privately any employer, owner, operator, agent, or employee. The commissioner shall conduct the interviews of persons during the inspection or at other convenient times. ~~[The commissioner may take~~

and preserve testimony, examine witnesses and administer oaths as provided for in §245 of these regulations.]

[16 VAC 25-60-245

Take and Preserve Testimony, Examine Witnesses and Administer Oaths

1. Section 40.1-6(4) of the Code of Virginia authorizes the commissioner, in the discharge of his duties, to take and preserve testimony, examine witnesses and administer oaths. In accordance with §40.1-6(5) of the Code of Virginia, the Commissioner of Labor and Industry may appoint such representatives as are necessary to carry out the functions outlined in §40.1-6(4) of the Code of Virginia. Such appointments shall be made in writing, identify the individual being appointed, the length of appointment, the method of withdrawal of such appointment, and specify what duties are being prescribed.

2. The oath shall be administered by the commissioner's appointed representative to the witness as follows: "Do you swear or affirm to tell the truth".

3. Testimony given under oath shall be recorded by a court reporter.

4. Questioning of employers, owners, operators, agents or employees under oath shall be in private in accordance with §40.1-49.8(2) of the Code of Virginia.

5. An employer's refusal to make an owner, operator, agent or employee available to the commissioner for examination under this section shall be considered a refusal to consent to the commissioner's inspection authority under §40.1-49.8 of the Code of Virginia. Upon such refusal the commissioner may seek an administrative search warrant in accordance with the provisions contained in §§40.1-49.9 to -49.12 of the Code of Virginia, and obtain an order from the appropriate judge commanding the employer to make the subject owner, operator, agent or employee available for examination at a specified location by a date and time certain.

6. In accordance with §40.1-10 of the Code of Virginia, if any person who may be sworn to give testimony shall willfully fail or refuse to answer any legal and proper question propounded to him concerning the subject of the examination under §40.1-6 of the Code of Virginia, he shall be guilty of

a misdemeanor. Such person, upon conviction thereof, shall be fined not exceeding \$100 nor less than \$25 or imprisoned in jail not exceeding 90 days or both. Any such refusal on the part of any person to comply with this section may be referred by the Commissioner of Labor and Industry to the appropriate Commonwealth's Attorney for prosecution.]

....

Part VI

Citation and Penalty

16VAC25-60-260. Issuance of citation and proposed penalty.

....

A.

....

1.

....

e. Notwithstanding subdivision 1 b of this subsection, if the commissioner is first notified of a work-related hazard, or incident resulting in an injury or illness to an employee(s), through receipt of a complaint in accordance with ~~[\$100 of these regulations, 16VAC25-60-100]~~ or referral, the six-month time frame shall not be deemed to commence until the commissioner actually receives the complaint or referral.

....

16VAC25-60-270. Contest of citation or proposed penalty; general proceedings.

....

C. The employer's contest of a citation or proposed penalty shall not affect the citation posting requirements of ~~[\$40 of these regulations 16VAC25-60-40]~~ unless and until the court ruling on the contest vacates the citation.

D. When the commissioner has received written notification of a contest of citation or proposed penalty, he will attempt to resolve the matter by settlement, using the procedures of ~~[\$§330 and 340 of these regulations 16VAC25-60-330 and 16VAC25-60-340]~~.

....

16VAC25-60-280. General contest proceedings applicable to the public sector.

....

E. The commissioner shall seek to resolve any controversies or issues rising from a citation issued to any public employer in an informal conference as described in ~~[\§330 of these regulations 16VAC25-60-330]~~.

F. The contest by a public employer shall not affect the requirements to post the citation as required at ~~[\§40 of these regulations 16VAC25-60-40]~~ unless and until the commissioner's or the court ruling on the contest vacates the citation. A contest of a citation may stay the time permitted for abatement pursuant to § 40.1-49.4 C of the Code of Virginia.

....

Part VII

Abatement

16VAC25-60-310. Contest of abatement period.

....

C. The same procedures and requirements used for contest of citation and penalty, set forth at ~~[\§§270, 280, 290, and 300, of these regulations 16VAC25-60-270, 16VAC25-60-280, 16VAC25-60-290, and 16VAC25-60-300]~~, shall apply to contests of abatement period.

....

16VAC25-60-320. Extension of abatement time.

....

C.

....

5. A certification that a copy of the petition has been posted and served on the authorized representative of affected employees, if there is one, in accordance with ~~[\§40 of these regulations 16VAC25-60-40]~~, and a certification of the date upon which such posting and service was made.

....

G. When affected employees, or their representatives object to the petition, the commissioner will attempt to resolve the issue in accordance with ~~[\§330 of these regulations 16VAC25-60-330]~~. If the matter is not settled or settlement does not appear probable, objections will be heard in the manner set forth in subsection I of this section.

....

Part VIII

Review and Settlement

16VAC25-60-330. Informal conference.

....

E. An employee representative shall be given the opportunity to participate in a conference requested by the employer. This same right will be extended to the employer when an informal conference is requested by employees. It is the duty of the employer, if he has requested a conference, to notify the employees by the means described in ~~[\$40 of these regulations~~ 16VAC25-60-40 as soon as the time and place of the conference have been established. Upon granting an employee request for a conference, the commissioner is responsible for notifying the employer. The commissioner, at his discretion, may conduct separate portions of the conference with the employer and employee representative.

F. During or following the conference the commissioner may affirm or amend the citations, penalties, or abatement period if the order has not become final. The commissioner shall notify the employer in writing of his decision. The employer shall notify employees of this decision in the manner set forth in ~~[\$40 of these regulations~~ 16VAC25-60-40].

....

16VAC25-60-340. Settlement.

....

B. Settlement negotiations will ordinarily take place in the medium of an informal conference. Employees shall be given notice of scheduled settlement discussions and shall be given opportunity to participate in the manner provided for in ~~[\$330.E. of these regulations~~ 16VAC25-60-330 E].



COMMONWEALTH of VIRGINIA
DEPARTMENT OF LABOR AND INDUSTRY

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VIRGINIA SAFETY AND HEALTH CODES BOARD

BRIEFING PACKAGE

FOR JANUARY 14, 2010

Revising Standards Referenced in 16 VAC 25-90-1910.102, Acetylene Standard for General Industry, §1910.102; Direct Final Rule

I. Action Requested.

The Virginia Occupational Safety and Health (VOSH) Program requests the Safety and Health Codes Board to consider for adoption federal OSHA's direct final rule for Revising Standards Referenced in the Acetylene Standard, §1910.102, as published in 74 FR 40441 on August 11, 2009.

The proposed effective date is April 15, 2010.

II. Summary of the Amendment.

Federal OSHA revised its Acetylene Standard for general industry by updating references to national consensus standards published by standards developing organizations ("SDO standards").

This rulemaking is a continuation of federal OSHA's ongoing effort to update references to SDO standards used throughout its rules.

The revised standard requires that employers ensure that in-plant transfer, handling, storage and use of acetylene cylinders comply with Compressed Gas Association Pamphlet G-1-2003, Acetylene. Piping systems, as well as facilities and equipment, used to generate acetylene or to fill acetylene cylinders are now required to comply with National Fire Protection Standard NFPA 51A, *Standard for Acetylene Charging Plants*.

Revisions were also made in §1910.6, Incorporation by reference, which reference Acetylene.

III. Basis, Purpose and Impact of the Direct Final Rule.

A. Basis.

Federal OSHA initially adopted the Acetylene Standard in 1974, pursuant to Section 6(a) of the OSH Act of 1970 (OSH Act; 29 U.S.C. 651, 655). This section allowed OSHA, during the first two years after passage of the OSH Act, to adopt existing federal and national consensus standards in OSHA safety and health standards, including the current Acetylene Standard.

This requested action is part of a rulemaking project by federal OSHA to update its standards that reference or include language from outdated standards published by standards developing organizations (“SDO Standards”). The SDO standards referenced in OSHA’s Acetylene Standard (29 CFR 1910.102) are among those SDO standards that OSHA identified for revision.

In this direct final rule, federal OSHA used the SDO rulemaking project because it expects the rules to: be noncontroversial; provide protection to employees that is at least equivalent to the protection afforded to them by the outdated SDO standard; and imposes no significant new compliance costs on employers. OSHA uses the direct final rule adoption procedure to update or, when appropriate, revoke references to outdated national consensus standards in OSHA rules.

If federal OSHA received significant adverse comments within 30 days prior to the November 9, 2009 publication, the accompanying Notice of Proposed Rulemaking would allow the agency to continue the rulemaking as a traditional “Notice and Comment” rulemaking (47 FR 40449). Federal OSHA received eight comments on the direct final rule by that date which OSHA determined were not significant adverse comments. Therefore, federal OSHA has confirmed its direct final rule became effective on November 9, 2009 (74 FR 57883).

B. Purpose.

The revisions will make the requirements of VOSH’s Acetylene standard, 16 VAC 25-90-1910.102, consistent with federal OSHA and with current industry practices.

The revisions will also ensure that Virginia employers have access to the latest safety requirements specified in the most recent versions of the SDO standards for managing Acetylene.

C. Impact on Employers.

The updated SDO standards provide employers with new and more extensive information than the current standards which should facilitate compliance. Federal OSHA believes that replacing the unenforceable SDO standard in §1910.102(b) clarifies employers’ compliance obligations and prevents inappropriate enforcement action, while also increasing employee protection.

This rulemaking imposes no significant new compliance costs on Virginia employers.

D. Impact on Employees.

The revisions in this direct final rule improve the Acetylene standard in providing safe workplaces for Virginia workers by incorporating current technology and safe industry work practices. For example, the revisions to the Acetylene Standard include mandatory requirements for Acetylene piping systems, have special requirements for high pressure piping systems, and prohibit storage of acetylene cylinders in confined space – requirements that are not included in the current SDO standards.

E. Impact on the Department of Labor and Industry.

No impact is anticipated on the Department with the adoption of the direct final rule.

Federal regulations 29 CFR 1953.23(a) and (b) require that Virginia, within six months of the occurrence of a federal program change, to adopt identical changes or promulgate equivalent changes which are at least as effective as the federal change. The Virginia Code reiterates this requirement in § 40.1-22(5). Adopting these revisions will allow Virginia to conform to the federal program change.

Contact Person:

Mr. Ron Graham
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(804) 786-0574
Ron.Graham@doli.virginia.gov

RECOMMENDED ACTION

Staff of the Department of Labor and Industry recommends that the Safety and Health Codes Board adopt the Direct Final Rule on Revising Standards Referenced in 16 VAC 25-90-1910.102, Acetylene Standard for General Industry, §1910.102, and in 16 VAC 25-90-1910.6, Incorporation by reference, §1910.6, as authorized by Virginia Code §§ 40.1-22(5) and 2.2-4006.A.4(c), with an effective date of April 15, 2010.

The Department also recommends that the Board state in any motion it may make to amend this regulation that it will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision of this or any other regulation which has been adopted in accordance with the above-cited subsection A.4(c) of the Administrative Process Act.

**Revising Standards Referenced in 16 VAC 25-90-1910.102, Acetylene Standard, §1910.102;
Direct Final Rule**

As Adopted by the
Safety and Health Codes Board

Date: _____



VIRGINIA OCCUPATIONAL SAFETY AND HEALTH PROGRAM

VIRGINIA DEPARTMENT OF LABOR AND INDUSTRY

Effective Date: _____

16 VAC 25-90-1910.6, Incorporation by Reference
16 VAC 25-90-1910.102, Acetylene

When the regulations, as set forth in the Direct Final Rule on Revising Standards Referenced in 16 VAC 25-90-1910.102, Acetylene Standard, §1910.102, and in 16 VAC 25-90-1910.6, Incorporation by reference, §1910.6, are applied to the Commissioner of the Department of Labor and Industry and/or to Virginia employers, the following federal terms shall be considered to read as below:

Federal Terms

VOSH Equivalent

29 CFR

VOSH Standard

Assistant Secretary

Commissioner of Labor and Industry

Agency

Department

November 9, 2009

April 15, 2010

5th Floor, Chantilly, VA 20151; telephone: 703-788-2700; fax: 703-961-1831; e-mail: *cga@cganet.com*.

* * * * *

(q) * * *

(34) NFPA 51A (2001) Standard for Acetylene Cylinder Charging Plants, IBR approved for § 1910.102(b) and (c). Copies of NFPA 51A-2001 are available for purchase from the: National Fire Protection Association, 1 Batterymarch Park, Quincy, MA 02169-7471; telephone: 1-800-344-35557; e-mail: *custserv@nfpa.org*.

(35) NFPA 51A (2006) Standard for Acetylene Cylinder Charging Plants, IBR approved for § 1910.102(b) and (c). Copies of NFPA 51A-2006 are available for purchase from the: National Fire Protection Association, 1 Batterymarch Park, Quincy, MA 02169-7471; telephone: 1-800-344-35557; e-mail: *custserv@nfpa.org*.

* * * * *

PART 1910—[AMENDED]

Subpart A—[Amended]

- 1. Revise the authority citation for subpart A of part 1910 to read as follows:

Authority: Sections 4, 6, 8, Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order Numbers 12-71 (36 FR 8754), 8-76 (41 FR 25059), 9-83 (48 FR 35736), 1-90 (55 FR 9033), 6-96 (62 FR 111), 3-2000 (65 FR 50017), 5-2002 (67 FR 65008), and 5-2007 (72 FR 31159), as applicable.

Sections 1910.7 and 1910.8 also issued under 29 CFR part 1911. Section 1910.7(f) also issued under 31 U.S.C. 9701, 29 U.S.C. 9a, 5 U.S.C. 553; Public Law 106-113 (113 Stat. 1501A-222); and OMB Circular A-25 (dated July 8, 1993) (58 FR 38142, July 15, 1993).

- 2. Amend § 1910.6 as follows:
 - A. Revise paragraph (k)(3).
 - B. Remove paragraphs (k)(4) and (k)(5), and redesignate paragraphs (k)(6) through (k)(15) as paragraphs (k)(4) through (k)(13).
 - C. Add new paragraphs (q)(34) and (q)(35).

The additions and revisions read as follows:

§ 1910.6 Incorporation by reference.

* * * * *

(k) * * *

(3) CGA G-1-2003 Acetylene, IBR approved for § 1910.102(a). Copies of CGA Pamphlet G-1-2003 are available for purchase from the: Compressed Gas Association, Inc., 4221 Walney Road,

Subpart H—[Amended]

- 3. Revise the authority citation for subpart H of part 1910 to read as follows:

Authority: Sections 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Orders Nos. 12-71 (36 FR 8754), 8-76 (41 FR 25059), 9-83 (48 FR 35736), 1-90 (55 FR 9033), 6-96 (62 FR 111), 3-2000 (65 FR 50017), 5-2002 (67 FR 65008), or 5-2007 (72 FR 31159), as applicable; and 29 CFR part 11.

Sections 1910.103, 1910.106 through 1910.111, and 1910.119, 1910.120, and 1910.122 through 1910.126 also issued under 29 CFR part 1911.

Section 1910.119 also issued under Section 304, Clean Air Act Amendments of 1990 (Pub. L. 101-549), reprinted at 29 U.S.C. 655 Note.

Section 1910.120 also issued under Section 126, Superfund Amendments and Reauthorization Act of 1986 as amended (29 U.S.C. 655 Note), and 5 U.S.C. 553.

- 4. Revise § 1910.102 to read as follows:

§ 1910.102 Acetylene.

(a) *Cylinders.* Employers must ensure that the in-plant transfer, handling, storage, and use of acetylene in cylinders comply with the provisions of CGA Pamphlet G-1-2003 ("Acetylene") (Compressed Gas Association, Inc., 11th ed., 2003).

(b) *Piped systems.* (1) Employers must comply with Chapter 9 ("Acetylene Piping") of NFPA 51A-2006 ("Standard for Acetylene Charging Plants") (National Fire Protection Association, 2006 ed., 2006).

(2) When employers can demonstrate that the facilities, equipment, structures, or installations used to generate acetylene or to charge (fill) acetylene cylinders were installed prior to February 16, 2006, these employers may comply with the provisions of Chapter 7 ("Acetylene Piping") of NFPA 51A-2001 ("Standard for Acetylene Charging Plants") (National Fire Protection Association, 2001 ed., 2001).

(3) The provisions of § 1910.102(b)(2) also apply when the facilities, equipment, structures, or installations used to generate acetylene or to charge (fill) acetylene cylinders were approved for construction or installation prior to February 16, 2006, but constructed and installed on or after that date.

(4) For additional information on acetylene piping systems, see CGA G-1.2-2006, Part 3 ("Acetylene piping") (Compressed Gas Association, Inc., 3rd ed., 2006).

(c) *Generators and filling cylinders.*

(1) Employers must ensure that facilities, equipment, structures, or installations used to generate acetylene or to charge (fill) acetylene cylinders comply with the provisions of NFPA 51A-2006 ("Standard for Acetylene Charging Plants") (National Fire Protection Association, 2006 ed., 2006).

(2) When employers can demonstrate that the facilities, equipment, structures, or installations used to generate acetylene or to charge (fill) of acetylene cylinders were constructed or installed prior to February 16, 2006, these employers may comply with the provisions of NFPA 51A-2001 ("Standard for Acetylene Charging Plants") (National Fire Protection Association, 2001 ed., 2001).

(3) The provisions of § 1910.102(c)(2) also apply when the facilities, equipment, structures, or installations were approved for construction or installation prior to February 16, 2006, but constructed and installed on or after that date.

[FR Doc. E9-18644 Filed 8-10-09; 8:45 am]

BILLING CODE 4510-26-P



**COMMONWEALTH of VIRGINIA
DEPARTMENT OF LABOR AND INDUSTRY**

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VIRGINIA SAFETY AND HEALTH CODES BOARD

BRIEFING PACKAGE

FOR JANUARY 14, 2010

**Updating OSHA Standards Based on National Consensus Standards;
Personal Protective Equipment; Revised Final Rule**

I. Action Requested.

The Virginia Occupational Safety and Health (VOSH) Program requests the Safety and Health Codes Board to consider for adoption federal OSHA's revised final rule for Updating OSHA Standards Based on National Consensus Standards; Personal Protective Equipment, as published in 74 FR 46350 on September 9, 2009.

The proposed effective date is for April 15, 2010.

II. Summary of the Revised Final Rule.

Federal OSHA issued this final rule to revise the personal protective equipment (PPE) sections of its general industry, shipyard employment, longshoring, and marine terminals standards regarding requirements for eye and face protective devices, head protection, and foot protection. Federal OSHA updated the references in its regulations to recognize more recent editions of the applicable national consensus standards, and deleted editions of the national consensus standards that PPE must meet if purchased before a specified date. Additionally, federal OSHA amended paragraph (a)(5)(v)[a] in 29 CFR 1910.94 that requires safety shoes to comply with a specific American National Standards Institute (ANSI) standard. It is also amending paragraph (b)(2)(ii)(I) in 29 CFR 1910.252 that requires filter lenses and plates in eye-protective equipment to meet a test for transmission or radiant energy specified by another ANSI standard. In amending these paragraphs, federal OSHA will require this safety equipment to comply with the applicable PPE design

provisions in 29 CFR 1910, subpart I.

III. Basis, Purpose and Impact of the revised Final Rule.

A. Basis.

Federal OSHA has been undertaking a series of projects to update its standards to incorporate the latest versions of national consensus and industry standards. These projects include updating or revoking national consensus and industry standards referenced in existing OSHA standards, updating regulatory text of standards adopted directly by OSHA from the language of outdated consensus standards, and, when appropriate, replacing specific references to outdated national consensus and industry standards with performance-oriented requirements.

Subpart I of OSHA's general industry standards contains design requirements for eye and face protective devices, head protection, and foot protection. OSHA has similar requirements in subpart I of part 1915 (Shipyard Employment), subpart E of part 1917 (Marine Terminals), and subpart J of part 1918 (Longshoring). These rules require that the specified PPE comply with national consensus standards incorporated by reference into the OSHA standards, unless the employer demonstrates that a piece of equipment is "as effective as" equipment that complies with the incorporated national consensus standard. These design provisions are part of comprehensive requirements to ensure that employees use PPE that will protect them from hazards in the workplace.

The incorporated ANSI standards are a decade and some times two decades old. Over this period, ANSI updated all of the standards and, in one instance, (the ANSI-Z41 standard for protective footwear), withdrew its standard when the American Society for Testing and Materials ("ASTM") adopted a national consensus standard for protective footwear. In response, manufacturers began manufacturing PPE that conforms with the updated ANSI and ASTM standards.

In the past, federal OSHA updated its PPE standards by revising them to incorporate recent versions of the national consensus standard, while leaving the earlier versions of these national consensus standards in the regulatory text. This action temporarily alleviated the problem of trying to obtain PPE manufactured in accordance with an earlier version of a national consensus standard, but it ensured that the problem would arise again as the later versions of the standards superseded the newly incorporated versions.

To ensure that the appendices remained useful in the future, OSHA promised to use direct-final rulemaking to incorporate future editions of consensus standards into the nonmandatory appendices for PPE. The final rule also deleted older, out-of-date consensus standards that OSHA had incorporated into its standards to allow employers to continue using PPE they had purchased before a specified.

B. Purpose.

These revisions are a continuation of a multiyear project launched by federal OSHA in 2004 to update or remove outdated references to specific consensus and industry standards located throughout its standards.

C. Impact on Employers.

The final rule allows employers increased flexibility in choosing PPE for employees. It will place no economic burden on employers because it does not require an employer to update or replace its PPE solely as a result of this rule if the PPE currently in use meets the existing standards. Under the final rule, employers will be able to continue to use the same equipment they have been using to meet their compliance obligation under the existing standards' design-criteria requirements. The final rule provides employers with additional options for meeting the design-criteria requirement – options most employers already are using. [74 FR 46354]

D. Impact on Employees.

Under this final rule, workers exposed to occupational hazards requiring head, foot or eye and face protection now will be provided protection based on a standard that reflects state-of-the-art technology and materials. The final rule also requires filter lenses and plates in eye-protective equipment to meet a test for transmission of radiant energy.

E. Impact on the Department of Labor and Industry.

The final rule will have no additional impact on the Department. It is another step in federal OSHA's efforts to update or remove references to outdated national consensus and industry standards.

Federal regulations 29 CFR 1953.23(a) and (b) require that Virginia, within six months of the occurrence of a federal program change, to adopt identical changes or promulgate equivalent changes which are at least as effective as the federal change. The Virginia Code reiterates this requirement in § 40.1-22(5). Adopting these revisions will allow Virginia to conform to the federal program change.

Contact Person:

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RECOMMENDED ACTION

Staff of the Department of Labor and Industry recommends that the Safety and Health Codes Board adopt the revised final rule on Updating OSHA Standards Based on National Consensus Standards; Personal Protective Equipment, as authorized by Virginia Code §§ 40.1-22(5) and 2.2-4006.A.4(c), with an effective date of April 15, 2010.

The Department also recommends that the Board state in any motion it may make to amend this regulation that it will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision of this or any other regulation which has been adopted in accordance with the above-cited subsection A.4(c) of the Administrative Process Act.

**Updating OSHA Standards Based on National Consensus Standards;
Personal Protective Equipment; Revised Final Rule**

As Adopted by the
Safety and Health Codes Board

Date: _____



VIRGINIA OCCUPATIONAL SAFETY AND HEALTH PROGRAM

VIRGINIA DEPARTMENT OF LABOR AND INDUSTRY

Effective Date: _____

- 16 VAC 25-90-1910.6, Incorporation by reference
- 16 VAC 25-90-1910.94, Ventilation
- 16 VAC 25-90-1910.133, Eye and Face protection
- 16 VAC 25-90-1910.135, Head protection
- 16 VAC 25-90-1910.136, Foot protection
- 16 VAC 25-90-1910.252, General requirements
- 16 VAC 25-100.1915.5, Incorporation by reference
- 16 VAC 25-100-1915.153, Eye and face protection
- 16 VAC 25-100-1915.155, Head protection
- 16 VAC 25-100-1915.156, Foot protection
- 16 VAC 25-120-1917.3, Public Sector Only, Incorporation by reference
- 16 VAC 25-120-1917.91, Public Sector Only, Eye and face protection
- 16 VAC 25-120-1917.93, Public Sector Only, Head protection
- 16 VAC 25-120-1917.94, Public Sector Only, Foot protection
- 16 VAC 25-130-1918.3, Incorporation by reference
- 16 VAC 25-130-1918.101, Eye and face protection
- 16 VAC 25-130-1918.103, Head protection
- 16 VAC 25-130-1918.104, Foot protection

When the regulations, as set forth in the revised final rule for Updating OSHA Standards Based on National Consensus Standards; Personal Protective Equipment, are applied to the Commissioner of the Department of Labor and Industry and/or to Virginia employers, the following federal terms shall be considered to read as below:

Federal Terms

VOSH Equivalent

29 CFR

VOSH Standard

Assistant Secretary

Commissioner of Labor and
Industry

Agency

Department

October 9, 2009

April 15, 2010

Amendments to Standards

■ For the reasons stated above in the preamble, the Occupational Safety and Health Administration is amending 29 CFR parts 1910, 1915, 1917, and 1918 as follows:

PART 1910—[AMENDED]

Subpart A—[Amended]

■ 1. Revise the authority citation for subpart A of part 1910 to read as follows:

Authority: Sections 4, 6, 8, Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Orders 12-71 (36 FR 8754), 8-76 (41 FR 25059), 9-83 (48 FR 35736), 1-90 (55 FR 9033), 6-96 (62 FR 111), 3-2000 (65 FR 50017), 5-2002 (67 FR 65008), and 5-2007 (72 FR 31160), as applicable.

Sections 1910.7 and 1910.8 also issued under 29 CFR Part 1911. Section 1910.7(f) also issued under 31 U.S.C. 9701, 29 U.S.C. 9a, 5 U.S.C. 553; Public Law 106-113 (113 Stat. 1501A-222); and OMB Circular A-25 (dated July 8, 1993) (58 FR 38142, July 15, 1993).

- 2. Amend § 1910.6 as follows:
- a. Revise paragraphs (a)(2) and (a)(4)
- b. Revise paragraph (e) introductory text
- c. Revise paragraphs (e)(60), (e)(61), and (e)(67) through (e)(72)
- d. Add new paragraphs (e)(73), (74), (75), (76), and (77)
- e. Revise paragraph (h) introductory text
- f. Add new paragraphs (h)(20) and (h)(21)

The additions and revisions read as follows:

§ 1910.6 Incorporation by reference.

(a) * * *
 (2) Any changes in the standards incorporated by reference in this part and an official historic file of such changes are available for inspection in the Docket Office at the national office of the Occupational Safety and Health Administration, U.S. Department of Labor, Washington, DC 20910; telephone: 202-693-2350 (TTY number: 877-889-5627).

(4) Copies of standards listed in this section and issued by private standards organizations are available for purchase from the issuing organizations at the addresses or through the other contact information listed below for these private standards organizations. In

addition, these standards are available for inspection at the National Archives and Records Administration (NARA). For information on the availability of these standards at NARA, telephone: 202-741-6030, or go to http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html. Also, the standards are available for inspection at any Regional Office of the Occupational Safety and Health Administration (OSHA), or at the OSHA Docket Office, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N-2625, Washington, DC 20210; telephone: 202-693-2350 (TTY number: 877-889-5627).

* * * * *
 (e) Except as noted, copies of the standards listed below in this paragraph are available for purchase from the American National Standards Institute (ANSI), 25 West 43rd Street, 4th Floor, New York, NY 10036; telephone: 212-642-4900; fax: 212-398-0023; Web site: <http://www.ansi.org>.

* * * * *
 (60) ANSI Z41-1999, American National Standard for Personal Protection—Protective Footwear; IBR approved for § 1910.136(b)(1)(ii). Copies of ANSI Z41-1999 are available for purchase only from the National Safety Council, P.O. Box 558, Itasca, IL 60143-0558; telephone: 1-800-621-7619; fax: 708-285-0797; Web site: <http://www.nsc.org>.

(61) ANSI Z41-1991, American National Standard for Personal Protection—Protective Footwear; IBR approved for § 1910.136(b)(1)(iii). Copies of ANSI Z41-1991 are available for purchase only from the National Safety Council, P.O. Box 558, Itasca, IL 60143-0558; telephone: 1-800-621-7619; fax: 708-285-0797; Web site: <http://www.nsc.org>.

* * * * *
 (67) ANSI Z87.1-2003, American National Standard Practice for Occupational and Educational Eye and Face Protection; IBR approved for §§ 1910.133(b)(1)(i) and 1910.252(b)(2)(ii)(I)(i). Copies of ANSI Z87.1-2003 are available for purchase only from the American Society of Safety Engineers, 1800 East Oakton Street, Des Plaines, IL 60018-2187; telephone: 847-699-2929; or from the International Safety Equipment Association (ISEA), 1901 North Moore Street, Arlington, VA 22209-1762; telephone: 703-525-1695; fax: 703-528-2148; Web site: <http://www.safetyequipment.org>.

(68) ANSI Z87.1-1989 (R-1998), American National Standard Practice for

Occupational and Educational Eye and Face Protection; IBR approved for § 1910.133(b) (1)(ii). Copies of ANSI Z87.1-1989 (R-1998) are available for purchase only from the American Society of Safety Engineers, 1800 East Oakton Street, Des Plaines, IL 60018-2187; telephone: 847-699-2929.

(69) ANSI Z87.1-1989, American National Standard Practice for Occupational and Educational Eye and Face Protection; IBR approved for § 1910.133(b)(1)(iii). Copies of ANSI Z87.1-1989 are available for purchase only from the American Society of Safety Engineers, 1800 East Oakton Street, Des Plaines, IL 60018-2187; telephone: 847-699-2929.

(70) ANSI Z88.2-1969, Practices for Respiratory Protection; IBR approved for §§ 1910.94(c)(6)(iii)(a), 1910.134(c); and 1910.261(a)(3)(xxvi), (b)(2), (f)(5), (g)(15)(v), (h)(2)(iii), (h)(2)(iv), and (i)(4).

(71) ANSI Z89.1-2003, American National Standard for Industrial Head Protection; IBR approved for § 1910.135(b)(1)(i). Copies of ANSI Z89.1-2003 are available for purchase only from the International Safety Equipment Association, 1901 North Moore Street, Arlington, VA 22209-1762; telephone: 703-525-1695; fax: 703-528-2148; Web site: <http://www.safetysiteequipment.org>.

(72) ANSI Z89.1-1997, American National Standard for Industrial Head Protection; IBR approved for § 1910.135(b)(1)(ii). Copies of ANSI Z89.1-1997 are available for purchase only from the International Safety Equipment Association, 1901 North Moore Street, Arlington, VA 22209-1762; telephone: 703-525-1695; fax: 703-528-2148; Web site: <http://www.safetysiteequipment.org>.

(73) ANSI Z89.1-1986, American National Standard for Personnel Protection—Protective Headwear for Industrial Workers—Requirements; IBR approved for § 1910.135(b)(1)(iii).

(74) ANSI Z41.1-1967 Men's Safety Toe Footwear; IBR approved for § 1910.261(i)(4).

(75) ANSI Z87.1-1968 Practice of Occupational and Educational Eye and Face Protection; IBR approved for § 1910.261(a)(3)(xxv), (d)(1)(ii), (f)(5), (g)(1), (g)(15)(v), (g)(18)(ii), and (i)(4).

(76) ANSI Z89.1-1969 Safety Requirements for Industrial Head Protection; IBR approved for § 1910.261(a)(3)(xxvii), (b)(2), (g)(15)(v), and (i)(4).

(77) ANSI Z89.2-1971 Safety Requirements for Industrial Protective Helmets for Electrical Workers, Class B; IBR approved for § 1910.268(i)(1).

* * * * *

(h) Copies of the standards listed below in this paragraph are available for purchase from ASTM International, 100 Barr Harbor Drive, P.O. Box C700, West Conshohocken, PA 19428-2959; telephone: 610-832-9585; fax: 610-832-9555; e-mail: service@astm.org; Web site: <http://www.astm.org>.

* * * * *

(20) ASTM F-2412-2005, Standard Test Methods for Foot Protection; IBR approved for § 1910.136(b)(1)(i).

(21) ASTM F-2413-2005, Standard Specification for Performance Requirements for Protective Footwear; IBR approved for § 1910.136(b)(1)(i).

* * * * *

Subpart G—[Amended]

■ 3. The authority citation for subpart G of part 1910 continues to read as follows:

Authority: Sections 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Orders 12-71 (36 FR 8754), 8-76 (41 FR 25059), 9-83 (48 FR 35736), 1-90 (55 FR 9033), 6-96 (62 FR 111), 3-2000 (65 FR 50017), 5-2002 (67 FR 65008), or 5-2007 (72 FR 31160), as applicable; and 29 CFR part 1911.

■ 4. Revise paragraph (a)(5)(v)(a) of § 1910.94 to read as follows:

§ 1910.94 Ventilation.

- (a) * * *
- (5) * * *
- (v) * * *

(a) Protective footwear must comply with the requirements specified by 29 CFR 1910.136(b)(1).

* * * * *

Subpart I—[Amended]

■ 5. Revise the authority citation for subpart I of part 1910 to read as follows:

Authority: Sections 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Orders 12-71 (36 FR 8754), 8-76 (41 FR 25059), 9-83 (48 FR 35736), 1-90 (55 FR 9033), 6-96 (62 FR 111), 3-2000 (65 FR 50017), 5-2002 (67 FR 65008), or 5-2007 (72 FR 31160), as applicable.

Sections 1910.132, 1910.134, and 1910.138 of 29 CFR also issued under 29 CFR part 1911.

Sections 1910.133, 1910.135, and 1910.136 of 29 CFR also issued under 29 CFR part 1911 and 5 U.S.C. 553.

■ 6. Revise paragraph (b) of § 1910.133 to read as follows:

§ 1910.133 Eye and face protection.

* * * * *

(b) *Criteria for protective eye and face protection.* (1) Protective eye and face protection devices must comply with

any of the following consensus standards:

(i) ANSI Z87.1-2003, "American National Standard Practice for Occupational and Educational Eye and Face Protection," which is incorporated by reference in § 1910.6;

(ii) ANSI Z87.1-1989 (R-1998), "American National Standard Practice for Occupational and Educational Eye and Face Protection," which is incorporated by reference in § 1910.6;

(iii) ANSI Z87.1-1989, "American National Standard Practice for Occupational and Educational Eye and Face Protection," which is incorporated by reference in § 1910.6.

(2) Protective eye and face protection devices that the employer demonstrates are at least as effective as protective eye and face protection devices that are constructed in accordance with one of the above consensus standards will be deemed to be in compliance with the requirements of this section.

* * * * *

■ 7. Revise paragraph (b) of § 1910.135 to read as follows:

§ 1910.135 Head protection.

* * * * *

(b) *Criteria for head protection.* (1) Head protection must comply with any of the following consensus standards:

(i) ANSI Z89.1-2003, "American National Standard for Industrial Head Protection," which is incorporated by reference in § 1910.6;

(ii) ANSI Z89.1-1997, "American National Standard for Industrial Head Protection," which is incorporated by reference in § 1910.6; or

(iii) ANSI Z89.1-1986, "American National Standard for Personnel Protection—Protective Headwear for Industrial Workers—Requirements," which is incorporated by reference in § 1910.6.

(2) Head protection devices that the employer demonstrates are at least as effective as head protection devices that are constructed in accordance with one of the above consensus standards will be deemed to be in compliance with the requirements of this section.

■ 8. Revise paragraph (b) of § 1910.136 to read as follows:

§ 1910.136 Foot protection.

* * * * *

(b) *Criteria for protective footwear.* (1) Protective footwear must comply with any of the following consensus standards:

(i) ASTM F-2412-2005, "Standard Test Methods for Foot Protection," and ASTM F-2413-2005, "Standard Specification for Performance

Requirements for Protective Footwear," which are incorporated by reference in § 1910.6;

(ii) ANSI Z41-1999, "American National Standard for Personal Protection—Protective Footwear," which is incorporated by reference in § 1910.6; or

(iii) ANSI Z41-1991, "American National Standard for Personal Protection—Protective Footwear," which is incorporated by reference in § 1910.6.

(2) Protective footwear that the employer demonstrates is at least as effective as protective footwear that is constructed in accordance with one of the above consensus standards will be deemed to be in compliance with the requirements of this section.

■ 9. Add a paragraph at the end of paragraph 9 in Appendix B to subpart I that reads as follows:

Appendix B to Subpart I to Part 1910—Non-Mandatory Compliance Guidelines for Hazard Assessment and Personal Protective Equipment Selection

9. Selection guidelines for head protection.

Beginning with the ANSI Z89.1-1997 standard, ANSI updated the classification system for protective helmets. Prior revisions used type classifications to distinguish between caps and full brimmed hats. Beginning in 1997, Type I designated helmets designed to reduce the force of impact resulting from a blow only to the top of the head, while Type II designated helmets designed to reduce the force of impact resulting from a blow to the top or sides of the head. Accordingly, if a hazard assessment indicates that lateral impact to the head is foreseeable, employers must select Type II helmets for their employees. To improve comprehension and usefulness, the 1997 revision also redesignated the electrical-protective classifications for helmets as follows: "Class G—General"; helmets designed to reduce the danger of contact with low-voltage conductors; "Class E—Electrical"; helmets designed to reduce the danger of contact with conductors at higher voltage levels; and "Class C—Conductive"; helmets that provide no protection against contact with electrical hazards.

Subpart Q—[Amended]

■ 10. The authority citation for subpart Q of part 1910 continues to read as follows:

Authority: Sections 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Orders 12-71 (36 FR 8754), 8-76 (41 FR 25059), 9-83 (48 FR 35736), 1-90 (55 FR 9033), 6-96 (62 FR 111), 3-2000 (65 FR 50017), 5-2002 (67 FR 65008), or 5-2007 (72 FR 31160), as applicable; and 29 CFR part 1911.

■ 11. Revise paragraph (b)(2)(ii)(I) of § 1910.252 to read as follows:

§ 1910.252 General requirements.

- (b) * * *
- (2) * * *
- (ii) * * *
- (I) Filter lenses must meet the test for transmission of radiant energy prescribed by any of the consensus standards listed in 29 CFR 1910.133(b)(1).

PART 1915—[AMENDED]

■ 12. The authority citation for part 1915 continues to read as follows:

Authority: Section 41, Longshore and Harbor Workers' Compensation Act (33 U.S.C. 941); Sections 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Orders 12-71 (36 FR 8754), 8-76 (41 FR 25059), 9-83 (48 FR 35736), 1-90 (55 FR 9033), 6-96 (62 FR 111), 3-2000 (65 FR 50017), 5-2002 (67 FR 65008), or 5-2007 (72 FR 31160), as applicable; and 29 CFR part 1911.

Subpart A—[Amended]

■ 13. Amend § 1915.5 as follows:

- a. Revise paragraphs (b) and (c).
 - b. Revise paragraph (d)(1) introductory text.
 - c. Revise paragraphs (d)(1)(iv) through (d)(1)(ix).
 - c. Add new paragraphs (d)(1)(x), and (d)(1)(xi).
 - d. Add new paragraph (d)(5).
- The revision and additions read as follows:

§ 1915.5 Incorporation by reference.

(b)(1) The standards listed in paragraph (d) of this section are incorporated by reference in the corresponding sections noted as the sections exist on the date of the approval, and a notice of any change in these standards will be published in the **Federal Register**. The Director of the Federal Register approved these incorporations by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

(2) Any changes in the standards incorporated by reference in this part and an official historic file of such changes are available for inspection in the Docket Office at the national office of the Occupational Safety and Health Administration, U.S. Department of Labor, Washington, DC 20910; telephone: 202-693-2350 (TTY number: 877-889-5627).

(c) Copies of standards listed in this section and issued by private standards

organizations are available for purchase from the issuing organizations at the addresses or through the other contact information listed below for these private standards organizations. In addition, these standards are available for inspection at the National Archives and Records Administration (NARA). For information on the availability of these standards at NARA, telephone: 202-741-6030, or go to http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html. Also, the standards are available for inspection at any Regional Office of the Occupational Safety and Health Administration (OSHA), or at the OSHA Docket Office, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N-2625, Washington, DC 20210; telephone: 202-693-2350 (TTY number: 877-889-5627).

(d)(1) Except as noted, copies of the standards listed below in this paragraph are available for purchase from the American National Standards Institute (ANSI), 25 West 43rd Street, 4th Floor, New York, NY 10036; telephone: 212-642-4900; fax: 212-398-0023; Web site: <http://www.ansi.org>.

(iv) ANSI Z41-1999, American National Standard for Personal Protection—Protective Footwear; IBR approved for § 1915.156(b)(1)(ii). Copies of ANSI Z41-1999 are available for purchase only from the National Safety Council, P.O. Box 558, Itasca, IL 60143-0558; telephone: 1-800-621-7619; fax: 708-285-0797; Web site: <http://www.nsc.org>.

(v) ANSI Z41-1991, American National Standard for Personal Protection—Protective Footwear; IBR approved for § 1915.156(b)(1)(iii). Copies of ANSI Z41-1991 are available for purchase only from the National Safety Council, P.O. Box 558, Itasca, IL 60143-0558; telephone: 1-800-621-7619; fax: 708-285-0797; Web site: <http://www.nsc.org>.

(vi) ANSI Z87.1-2003, American National Standard Practice for Occupational and Educational Eye and Face Protection; IBR approved for § 1915.153(b)(1)(i). Copies of ANSI Z87.1-2003 are available for purchase only from the American Society of Safety Engineers, 1800 East Oakton Street, Des Plaines, IL 60018-2187; telephone: 847-699-2929; or from the International Safety Equipment Association (ISEA), 1901 North Moore Street, Arlington, VA 22209-1762; telephone: 703-525-1695; fax: 703-528-2148; Web site: <http://www.safetyequipment.org>.

(vii) ANSI Z87.1-1989 (R-1998), American National Standard Practice for Occupational and Educational Eye and Face Protection; IBR approved for § 1915.153(b)(1)(ii). Copies of ANSI Z87.1-1989 (R-1998) are available for purchase only from the American Society of Safety Engineers, 1800 East Oakton Street, Des Plaines, IL 60018-2187; telephone: 847-699-2929.

(viii) ANSI Z87.1-1989, American National Standard Practice for Occupational and Educational Eye and Face Protection; IBR approved for § 1915.153(b)(1)(iii).

(ix) ANSI Z89.1-2003, American National Standard for Industrial Head Protection; IBR approved for § 1915.155(b)(1)(i). Copies of ANSI Z89.1-2003 are available for purchase only from the International Safety Equipment Association, 1901 North Moore Street, Arlington, VA 22209-1762; telephone: 703-525-1695; fax: 703-528-2148; Web site: <http://www.safetysite.com>.

(x) ANSI Z89.1-1997, American National Standard for Industrial Head Protection; IBR approved for § 1915.155(b)(1)(ii). Copies of ANSI Z89.1-1997 are available for purchase only from the International Safety Equipment Association, 1901 North Moore Street, Arlington, VA 22209-1762; telephone: 703-525-1695; fax: 703-528-2148; Web site: <http://www.safetysite.com>.

(xi) ANSI Z89.1-1986, American National Standard for Personnel Protection—Protective Headwear for Industrial Workers—Requirements; IBR approved for § 1915.155(b)(1)(iii).

(5) Copies of the standards listed below in this paragraph are available for purchase from ASTM International, 100 Barr Harbor Drive, P.O. Box C700, West Conshohocken, PA 19428-2959; telephone: 610-832-9585; fax: 610-832-9555; e-mail: service@astm.org; Web site: <http://www.astm.org>;

(i) ASTM F-2412-2005, Standard Test Methods for Foot Protection; IBR approved for § 1915.156(b)(1)(i).

(ii) ASTM F-2413-2005, Standard Specification for Performance Requirements for Protective Footwear; IBR approved for § 1915.156(b)(1)(i).

Subpart I—[Amended]

■ 14. Revise paragraph (b) of § 1915.153 to read as follows:

§ 1915.153 Eye and face protection.

(b) *Criteria for protective eye and face devices.* (1) Protective eye and face protection devices must comply with

any of the following consensus standards:

(i) ANSI Z87.1-2003, “American National Standard Practice for Occupational and Educational Eye and Face Protection,” which is incorporated by reference in § 1915.5;

(ii) ANSI Z87.1-1989 (R-1998), “American National Standard Practice for Occupational and Educational Eye and Face Protection,” which is incorporated by reference in § 1915.5; or

(iii) ANSI Z87.1-1989, “American National Standard Practice for Occupational and Educational Eye and Face Protection,” which is incorporated by reference in § 1915.5.

(2) Eye and face protection devices that the employer demonstrates are at least as effective as protective eye and face protection devices that are constructed in accordance with one of the above consensus standards will be deemed to be in compliance with the requirements of this section.

■ 15. Revise paragraph (b) of § 1915.155 to read as follows:

§ 1915.155 Head protection.

* * * * *

(b) *Criteria for protective helmets.* (1) Head protection must comply with any of the following consensus standards:

(i) ANSI Z89.1-2003, “American National Standard for Industrial Head Protection,” which is incorporated by reference in § 1915.5;

(ii) ANSI Z89.1-1997, “American National Standard for Industrial Head Protection,” which is incorporated by reference in § 1915.5; or

(iii) ANSI Z89.1-1986, “American National Standard for Personnel Protection—Protective Headwear for Industrial Workers—Requirements,” which is incorporated by reference in § 1915.5.

(2) Head protection devices that the employer demonstrates are at least as effective as head protection devices that are constructed in accordance with one of the above consensus standards will be deemed to be in compliance with the requirements of this section.

■ 16. Revise paragraph (b) of § 1915.156 to read as follows:

§ 1915.156 Foot protection.

* * * * *

(b) *Criteria for protective footwear.* (1) Protective footwear must comply with any of the following consensus standards:

(i) ASTM F-2412-2005, “Standard Test Methods for Foot Protection,” and ASTM F-2413-2005, “Standard Specification for Performance Requirements for Protective Footwear,”

which are incorporated by reference in § 1915.5;

(ii) ANSI Z41-1999, “American National Standard for Personal Protection—Protective Footwear,” which is incorporated by reference in § 1915.5; or

(iii) ANSI Z41-1991, “American National Standard for Personal Protection—Protective Footwear,” which is incorporated by reference in § 1915.5.

(2) Protective footwear that the employer demonstrates is at least as effective as protective footwear that is constructed in accordance with one of the above consensus standards will be deemed to be in compliance with the requirements of this section.

PART 1917—[AMENDED]

■ 17. Revise the authority citation for part 1917 to read as follows:

Authority: Section 41, Longshore and Harbor Worker's Compensation Act (33 U.S.C. 941); Sections 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Orders 12-71 (36 FR 8754), 8-76 (41 FR 25059), 9-83 (48 FR 35736), 1-90 (55 FR 9033), 6-96 (62 FR 111), 3-2000 (65 FR 50017), 5-2002 (67 FR 65008), or 5-2007 (72 FR 31160), as applicable; and 29 CFR part 1911.

Subpart A—[Amended]

■ 18. Amend 1917.3 as follows:

■ a. Revise paragraphs (a)(2), (a)(3), and (a)(4).

■ b. Revise paragraph (b) introductory text.

■ c. Revise paragraphs (b)(4) through (b)(7).

■ d. Add new paragraphs (b)(8) through (b)(12).

■ e. Add new paragraph (c).

The revisions and additions read as follows:

§ 1917.3 Incorporation by reference.

(a) * * *

(2) The standards listed in paragraph (b) of this section are incorporated by reference in the corresponding sections noted as the sections exist on the date of the approval, and a notice of any change in these standards will be published in the **Federal Register**. The Director of the Federal Register approved these incorporations by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

(3) Any changes in the standards incorporated by reference in this part and an official historic file of such changes are available for inspection in the Docket Office at the national office of the Occupational Safety and Health

Administration, U.S. Department of Labor, Washington, DC 20910; telephone: 202-693-2350 (TTY number: 877-889-5627).

(4) Copies of standards listed in this section and issued by private standards organizations are available for purchase from the issuing organizations at the addresses or through the other contact information listed below for these private standards organizations. In addition, these standards are available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, telephone: 202-741-6030, or go to http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html. Also, the material is available for inspection at any Regional Office of the Occupational Safety and Health Administration (OSHA), or at the OSHA Docket Office, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N-2625, Washington, DC 20210; telephone: 202-693-2350 (TTY number: 877-889-5627).

(b) Except as noted, copies of the standards listed below in this paragraph are available for purchase from the American National Standards Institute (ANSI), 25 West 43rd Street, 4th Floor, New York, NY 10036; telephone: 212-642-4900; fax: 212-398-0023; Web site: <http://www.ansi.org>.

* * * * *
(4) ANSI Z41-1999, American National Standard for Personal Protection—Protective Footwear; IBR approved for § 1917.94(b)(1)(ii). Copies of ANSI Z41-1999 are available for purchase only from the National Safety Council, P.O. Box 558, Itasca, IL 60143-0558; telephone: 1-800-621-7619; fax: 708-285-0797; Web site: <http://www.nsc.org>.

(5) ANSI Z41-1991, American National Standard for Personal Protection—Protective Footwear; IBR approved for § 1917.94(b)(1)(iii). Copies of ANSI Z41-1991 are available for purchase only from the National Safety Council, P.O. Box 558, Itasca, IL 60143-0558; telephone: 1-800-621-7619; fax: 708-285-0797; Web site: <http://www.nsc.org>.

(6) ANSI Z87.1-2003, American National Standard Practice for Occupational and Educational Eye and Face Protection; IBR approved for § 1917.91(a)(1)(i)(A). Copies of ANSI Z87.1-2003 are available for purchase only from the American Society of Safety Engineers, 1800 East Oakton Street, Des Plaines, IL 60018-2187; telephone: 847-699-2929; or from the International Safety Equipment

Association (ISEA), 1901 North Moore Street, Arlington, VA 22209-1762; telephone: 703-525-1695; fax: 703-528-2148; Web site: <http://www.safetysafetyequipment.org>.

(7) ANSI Z87.1-1989 (R-1998), American National Standard Practice for Occupational and Educational Eye and Face Protection; IBR approved for § 1917.91(a)(1)(i)(B). Copies of ANSI Z87.1-1989 (R-1998) are available for purchase only from the American Society of Safety Engineers, 1800 East Oakton Street, Des Plaines, IL 60018-2187; telephone: 847-699-2929.

(8) ANSI Z87.1-1989, American National Standard Practice for Occupational and Educational Eye and Face Protection; IBR approved for § 1917.91(a)(1)(i)(C). Copies of ANSI Z87.1-1989 are available for purchase only from the American Society of Safety Engineers, 1800 East Oakton Street, Des Plaines, IL 60018-2187; telephone: 847-699-2929.

(9) ANSI Z89.1-2003, American National Standard for Industrial Head Protection; IBR approved for § 1917.93(b)(1)(i). Copies of ANSI Z89.1-2003 are available for purchase only from the International Safety Equipment Association, 1901 North Moore Street, Arlington, VA 22209-1762; telephone: 703-525-1695; fax: 703-528-2148; Web site: <http://www.safetysafetyequipment.org>.

(10) ANSI Z89.1-1997, American National Standard for Industrial Head Protection; IBR approved for § 1917.93(b)(1)(ii). Copies of ANSI Z89.1-1997 are available for purchase only from the International Safety Equipment Association, 1901 North Moore Street, Arlington, VA 22209-1762; telephone: 703-525-1695; fax: 703-528-2148; Web site: <http://www.safetysafetyequipment.org>.

(11) ANSI Z89.1-1986, American National Standard for Personnel Protection—Protective Headwear for Industrial Workers—Requirements; IBR approved for § 1917.93(b)(1)(iii).

(12) ASME B56.1, 1959, Safety Code for Powered Industrial Trucks, pages 8 and 13; IBR approved for § 1917.50(j)(1).

(c) Copies of the following standards are available for purchase from ASTM International, 100 Barr Harbor Drive, P.O. Box C700, West Conshohocken, PA 19428-2959; telephone: 610-832-9585; fax: 610-832-9555; e-mail: service@astm.org; Web site: <http://www.astm.org>.

(1) ASTM F-2412-2005, Standard Test Methods for Foot Protection; IBR approved for § 1917.94(b)(1)(i).

(2) ASTM F-2413-2005, Standard Specification for Performance

Requirements for Protective Footwear; IBR approved for § 1917.94(b)(1)(i).

Subpart E—[Amended]

■ 19. Revise paragraph (a)(1) of § 1917.91 to read as follows:

§ 1917.91 Eye and face protection.

(a)(1)(i) The employer shall ensure that each affected employee uses protective eye and face protection devices that comply with any of the following consensus standards:

(A) ANSI Z87.1-2003, “American National Standard Practice for Occupational and Educational Eye and Face Protection,” which is incorporated by reference in § 1917.3;

(B) ANSI Z87.1-1989 (R-1998), “American National Standard Practice for Occupational and Educational Eye and Face Protection,” which is incorporated by reference in § 1917.3; or

(C) ANSI Z87.1-1989, “American National Standard Practice for Occupational and Educational Eye and Face Protection,” which is incorporated by reference in § 1917.3.

(ii) Protective eye and face protection devices that the employer demonstrates are at least as effective as protective eye and face protection devices that are constructed in accordance with one of the above consensus standards will be deemed to be in compliance with the requirements of this section.

■ 20. Revise paragraph (b) of § 1917.93 to read as follows:

§ 1917.93 Head protection.

(b)(1) The employer must ensure that head protection complies with any of the following consensus standards:

(i) ANSI Z89.1-2003, “American National Standard for Industrial Head Protection,” which is incorporated by reference in § 1917.3;

(ii) ANSI Z89.1-1997, “American National Standard for Industrial Head Protection,” which is incorporated by reference in § 1917.3; or

(iii) ANSI Z89.1-1986, “American National Standard for Personnel Protection—Protective Headwear for Industrial Workers—Requirements,” which is incorporated by reference in § 1917.3.

(2) Head protection devices that the employer demonstrates are at least as effective as head protection devices that are constructed in accordance with one of the above consensus standards will be deemed to be in compliance with the requirements of this section.

■ 21. Revise paragraph (b) of § 1917.94 to read as follows:

§ 1917.94 Foot protection.

(b)(1) The employer must ensure that protective footwear complies with any of the following consensus standards:

(i) ASTM F-2412-2005, "Standard Test Methods for Foot Protection," and ASTM F-2413-2005, "Standard Specification for Performance Requirements for Protective Footwear," which are incorporated by reference in § 1917.3;

(ii) ANSI Z41-1999, "American National Standard for Personal Protection—Protective Footwear," which is incorporated by reference in § 1917.3; or

(iii) ANSI Z41-1991, "American National Standard for Personal Protection—Protective Footwear," which is incorporated by reference in § 1917.3.

(2) Protective footwear that the employer demonstrates is at least as effective as protective footwear that is constructed in accordance with one of the above consensus standards will be deemed to be in compliance with the requirements of this section.

PART 1918—[AMENDED]

■ 22. Revise the authority citation for part 1918 to read as follows:

Authority: Section 41, Longshore and Harbor Workers' Compensation Act (33 U.S.C. 941); Sections 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Orders 12-71 (36 FR 8754), 8-76 (41 FR 25059), 9-83 (48 FR 35736), 1-90 (55 FR 9033), 6-96 (62 FR 111), 3-2000 (65 FR 50017), 5-2002 (67 FR 65008), or 5-2007 (72 FR 31160), as applicable; and 29 CFR part 1911.

Subpart A—[Amended]

■ 23. Amend 1918.3 as follows:

■ a. Revise paragraphs (a)(2), (a)(3), and (a)(4).

■ b. Revise paragraph (b) introductory text.

■ c. Revise paragraphs (b)(4) through (b)(6).

■ d. Add new paragraphs (b)(7) through (b)(11).

■ e. Add new paragraph (c).

The revisions and additions read as follows:

§ 1918.3 Incorporation by reference.

(a) * * *

(2) The standards listed in paragraph (b) of this section are incorporated by reference in the corresponding sections noted as the sections exist on the date of the approval, and a notice of any

change in these standards will be published in the **Federal Register**. The Director of the Federal Register approved these incorporations by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

(3) Any changes in the standards incorporated by reference in this part and an official historic file of such changes are available for inspection in the Docket Office at the national office of the Occupational Safety and Health Administration, U.S. Department of Labor, Washington, DC 20910; telephone: 202-693-2350 (TTY number: 877-889-5627).

(4) Copies of standards listed in this section and issued by private standards organizations are available for purchase from the issuing organizations at the addresses or through the other contact information listed below for these private standards organizations. In addition, these standards are available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, telephone: 202-741-6030, or go to http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html. Also, the standards are available for inspection at any Regional Office of the Occupational Safety and Health Administration (OSHA), or at the OSHA Docket Office, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N-2625, Washington, DC 20210; telephone: 202-693-2350 (TTY number: 877-889-5627). (b) Except as noted, copies of the standards listed below in this paragraph are available for purchase from the American National Standards Institute (ANSI), 25 West 43rd Street, 4th Floor, New York, NY 10036; telephone: 212-642-4900; fax: 212-398-0023; Web site:

* * * * *

(4) ANSI Z41-1999, American National Standard for Personal Protection—Protective Footwear; IBR approved for § 1918.104(b)(1)(ii). Copies of ANSI Z41-1999 are available for purchase only from the National Safety Council, P.O. Box 558, Itasca, IL 60143-0558; telephone: 1-800-621-7619; fax: 708-285-0797; Web site: <http://www.nsc.org>.

(5) ANSI Z41-1991, American National Standard for Personal Protection—Protective Footwear; IBR approved for § 1918.104(b)(1)(iii). Copies of ANSI Z41-1991 are available for purchase only from the National Safety Council, P.O. Box 558, Itasca, IL 60143-0558; telephone: 1-800-621-7619; fax: 708-285-0797; Web site: <http://www.nsc.org>.

(6) ANSI Z87.1-2003, American National Standard Practice for Occupational and Educational Eye and Face Protection; IBR approved for § 1918.101(a)(1)(i)(A). Copies of ANSI Z87.1-2003 are available for purchase only from the American Society of Safety Engineers, 1800 East Oakton Street, Des Plaines, IL 60018-2187; telephone: 847-699-2929; or from the International Safety Equipment Association (ISEA), 1901 North Moore Street, Arlington, VA 22209-1762; telephone: 703-525-1695; fax: 703-528-2148; Web site: <http://www.safetyequipment.org>.

(7) ANSI Z87.1-1989 (R-1998), American National Standard Practice for Occupational and Educational Eye and Face Protection; IBR approved for § 1918.101(a)(1)(i)(B). Copies of ANSI Z87.1-1989 (R1998) are available for purchase only from the American Society of Safety Engineers, 1800 East Oakton Street, Des Plaines, IL 60018-2187; telephone: 847-699-2929.

(8) ANSI Z87.1-1989, American National Standard Practice for Occupational and Educational Eye and Face Protection; IBR approved for § 1918.101(a)(1)(i)(C). Copies of ANSI Z87.1-1989 are available for purchase only from the American Society of Safety Engineers, 1800 East Oakton Street, Des Plaines, IL 60018-2187; telephone: 847-699-2929.

(9) ANSI Z89.1-2003, American National Standard for Industrial Head Protection; IBR approved for § 1918.103(b)(1)(i). Copies of ANSI Z89.1-2003 are available for purchase only from the International Safety Equipment Association, 1901 North Moore Street, Arlington, VA 22209-1762; telephone: 703-525-1695; fax: 703-528-2148; Web site: <http://www.safetyequipment.org>.

(10) ANSI Z89.1-1997, American National Standard for Industrial Head Protection; IBR approved for § 1918.103(b)(1)(ii). Copies of ANSI Z89.1-1997 are available for purchase only from the International Safety Equipment Association, 1901 North Moore Street, Arlington, VA 22209-1762; telephone: 703-525-1695; fax: 703-528-2148; Web site: <http://www.safetyequipment.org>.

(11) ANSI Z89.1-1986, American National Standard for Personnel Protection—Protective Headwear for Industrial Workers—Requirements; IBR approved for § 1918.103(b)(1)(iii).

(c) Copies of the following standards are available for purchase from ASTM International, 100 Barr Harbor Drive, P.O. Box C700, West Conshohocken, PA 19428-2959; telephone: 610-832-9585; fax: 610-832-9555; e-mail:

seviceastm.org; Web site: <http://www.astm.org>.

(1) ASTM F-2412-2005, Standard Test Methods for Foot Protection; IBR approved for § 1917.94(b)(1)(i).

(2) ASTM F-2413-2005, Standard Specification for Performance Requirements for Protective Footwear; IBR approved for § 1917.94(b)(1)(i).

Subpart J—[Amended]

■ 24. Revise paragraph (a)(1) of § 1918.101 to read as follows:

§ 1918.101 Eye and face protection.

(a) * * *
(1)(i) Employers must ensure that each employee uses appropriate eye and/or face protection when the employee is exposed to an eye or face hazard, and that protective eye and face devices comply with any of the following consensus standards:
(A) ANSI Z87.1-2003, “American National Standard Practice for Occupational and Educational Eye and Face Protection,” which is incorporated by reference in § 1918.3;
(B) ANSI Z87.1-1989 (R1998), “American National Standard Practice for Occupational and Educational Eye and Face Protection,” which is incorporated by reference in § 1918.3; or
(C) ANSI Z87.1-1989, “American National Standard Practice for Occupational and Educational Eye and Face Protection,” which is incorporated by reference in § 1918.3.
(ii) Protective eye and face protection devices that the employer demonstrates are at least as effective as protective eye and face protection devices that are constructed in accordance with one of the above consensus standards will be deemed to be in compliance with the requirements of this section.
* * * * *

■ 25. Revise paragraph (b) of § 1918.103 to read as follows:

§ 1918.103 Head protection.

(b)(1) The employer must ensure that head protection complies with any of the following consensus standards:
(i) ANSI Z89.1-2003, “American National Standard for Industrial Head Protection,” which is incorporated by reference in § 1918.3;
(ii) ANSI Z89.1-1997, “American National Standard for Industrial Head Protection,” which is incorporated by reference in § 1918.3; or
(iii) ANSI Z89.1-1986, “American National Standard for Personnel Protection—Protective Headwear for Industrial Workers—Requirements,” which is incorporated by reference in § 1918.3.

(2) Head protection devices that the employer demonstrates are at least as effective as head protection devices that are constructed in accordance with one of the above consensus standards will be deemed to be in compliance with the requirements of this section.
* * * * *

■ 26. Revise paragraph (b) of § 1918.104 to read as follows:

§ 1918.104 Foot protection.

(b)(1) The employer must ensure that protective footwear complies with any of the following consensus standards:
(i) ASTM F-2412-2005, “Standard Test Methods for Foot Protection,” and ASTM F-2413-2005, “Standard Specification for Performance Requirements for Protective Footwear,” which are incorporated by reference in § 1918.3;
(ii) ANSI Z41-1999, “American National Standard for Personal Protection—Protective Footwear,” which is incorporated by reference in § 1918.3; or
(iii) ANSI Z41-1991, “American National Standard for Personal Protection—Protective Footwear,” which is incorporated by reference in § 1918.3.
(2) Protective footwear that the employer demonstrates is at least as effective as protective footwear that is constructed in accordance with one of the above consensus standards will be deemed to be in compliance with the requirements of this section.

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COMMONWEALTH of VIRGINIA
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VIRGINIA SAFETY AND HEALTH CODES BOARD
BRIEFING PACKAGE
FOR JANUARY 14, 2009

NOTICE OF PERIODIC REVIEW OF CERTAIN EXISTING REGULATIONS

I. Action Requested

None at this time. Approvals on periodic review reports will be requested at future Board meetings.

II. Background and Basis

Governor Kaine issued Executive Order Number 36 (06), "Development and Review of Regulations Proposed by State Agencies." This executive order governs the periodic review or re-evaluation of existing regulations by all State Agencies and the regulatory process to promulgate new regulations or amend current regulations. All of the regulations promulgated by the Safety and Health Codes Board are included in the periodic review process at least once every four years.

III. Process

The process of periodic review begins with publication of a Notice of Periodic Review in the Virginia Register. When the Notice of Periodic Review is published, a public comment period of 21 days begins. Following the public comment period (no more than 90 days), the agency will post a report on the Town Hall website indicating either that (1) the Board will retain the regulation as is, or (2) the Board will begin a regulatory action to amend the regulation.

IV. Current Status

Two regulations of the Safety and Health Codes Board have been identified for review in 2010. A notice of periodic review will be published in the Virginia Register. The notice will request public comment for a period of 21 days for the following regulations:

1. 16 VAC 25-145, Safety Standards for Fall Protection in Steel Erection, Construction Industry; and
2. 16 VAC 25-155, General Requirements for Clearances, Construction of Electric Transmission and Distribution Lines and Equipment, Construction Industry – Subpart V (1926.950(c)(1)(i))

V. Next Stage of Review

Over the next several months, the Staff of the Department of Labor and Industry will be reviewing these regulations and will prepare the reports with recommendations to be presented for the Board’s consideration at the next meeting.

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